CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 74

WALTER L. MANGUS AND ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1942.

CERTIORARI GRANTED MAY 25, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 2285

MATTHEW A. MILLER, Appellant,

vs.

WALTER L. MANGUS and ROSE L. MANGUS, Appellees

Appellant's Statement of Points and Designation of Parts of Record—Filed March 20, 1941

Comes now Matthew A. Miller, appellant, and makes this statement of points on which he intends to rely and of the parts of the record which he thinks necessary for the consideration thereof on his appeal to the United States Circuit Court of Appeals for the Tenth Circuit for a reversal of the order of the District Court of the United States, District of Utah, made and entered February 24, 1941 overruling and denying his motion and his supplemental motion to strike property from the debtors' schedules herein, to-wit:

STATEMENT OF POINTS

Appellant says that there is manifest error in said order in that said Walter L. Mangus and Rose L. Mangus were joint tenants in and by the agreement for the sale of said property to them (which agreement is mentioned and referred to in said motions and in the affidavits of appellant and of H. P. Thomas, his counsel, in support thereof); that these proceedings were commenced December 28, 1940 by only one of said joint tenants, to-wit, Walter L. Mangus; that thereafter on January 27, 1941 appellant filed his said motion to strike said property; that Rose L. Mangus did not join therein or become party to these proceedings until she filed her "Joinder Of Rose L. Mangus" February 6, 1941 after said agreement of sale and her interest thereunder had terminated January 3, 1941, all as set forth in [fol. 2] said affidavit of appellant and said affidavit of his counsel in support of said motion to strike; and appellant says that the court erred in the particulars hereinafter set

forth and for such errors and each of them said order should be reversed, to-wit:

1. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and was thereby wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property.

2. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and did not acquire jurisdiction of said joint estate or the property thereof or of said Rose L. Mangus in regard thereto by her subsequent Joinder herein February 6, 1941; said agreement of sale and her interest thereunder having previously terminated January 3, 1941 as aforesaid, and the court being at all times without jurisdiction of said joint estate and the property thereof. . .

3. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

4. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

5. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

6. The court erred in failing and refusing to grant appel-
[fol. 3] lant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

7. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

8. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

PARTS OF RECORD NECESSARY

Appellant states that the entire record as certified up to this court by the Clerk of the United States District Court, District of Utah is necessary and material for the consideration of the foregoing points and hereby designates the same together also with the within statement of points and parts of record to be printed by the clerk as the record herein.

Dated March 19, 1941.

D. H. Thomas, H. P. Thomas, Attorneys for Appellant.

Received copy of the foregoing this 19th day of March, 1941.

J. D. Skeen, E. J. Skeen, By L. C., Attorneys for Appellees.

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

No. 15527

MATTHEW A. MILLER, Appellant, Debtor,

vs.

WALTER L. MANGUS and ROSE L. MANGUS, Appellees

MOTION OF MATTHEW A. MILLER TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed January 27, 1941

Comes Matthew A. Miller and moves the court to strike from the debtor's schedules of his property herein the lands and premises situate in Davis County, Utah, set forth in

schedule B-1 thereof and which are also described in the affidavit of Matthew A. Miller in support of this motion; and for general relief.

This motion is made upon the affidavit of Matthew A. Miller hereto attached and made a part hereof.

Dated this 27th day of January, 1941.

D. H. Thomas, H. P. Thomas, Attorneys for Matthew A. Miller.

In United States District Court

Affidavit in Support of Motion to Strike Property from Schedules—Filed January 27, 1941

State of Utah,
County of Salt Lake; ss:

Matthew A. Miller, being first duly sworn, on oath deposes and says that on the 3rd day of November, 1938, one [fol. 5] James K. Miller, the seller, entered into a certain agreement in writing with said Walter L. Mangus and Rose L. Mangus his wife, the buyers, in and by which said seller agreed to sell to the buyers as joint tenants with full rights of survivorship and not as tenants in common the lands and premises therein described situate in Davis County, Utah, to-wit:

Beginning at a point in the center of a 4 rod Street known as 4th East Street, which point is 3.8 rods East and 42.7 rods North from the Southwest corner of the S. W. ¼ of Section 20, Township 2 North, Range 1 East, Salt Lake Meridian, and running thence S. 81 deg. E. 23.4 rods; thence N. 12 deg. 05' E. 9.3 rods; thence N. 74 deg. 45' W. 230.7 feet; thence South to a point 80 feet North of the South boundary line of Grantors land; thence N. 81 deg. W. 195 feet to center of 4th East Street; thence South along the center of said street 80 feet to the place of beginning,

for the sum of $4000.00, payable $500.00 cash and $35.00 on the 3rd day of each and every month thereafter commencing December 3, 1938.

1. That thereafter said James K. Miller duly sold and conveyed said lands and premises and all of his right, title and interest therein, subject to said agreement, to this petitioner.

2. That said agreement provides that time is of the essence thereof and that on failure of the buyers to comply with the terms thereof or to make any payment or payments when due or in thirty days thereafter the seller should be released from all obligations in law and equity to convey said property, that all payments theretofore made thereon should be forfeited to the seller as liquidated damages for nonperformance of the contract and that the seller might re-enter and take possession of said lands and premises, and the buyers should at once become tenants at will thereof.

3. That on November 30, 1940 the buyers then being and for many months having been in default for more than thirty days in the payment of said contract, petitioner notified them in writing of such default and therein demanded that they fully make up and pay on or before January 3, [fol. 6] 1941 all payments and other sums which might then be due and owing on said contract by them, and that they thereafter at all times strictly pay and perform said contract as the same required them to do, and in case of their failure so to do on or before said January 3, 1941 that petitioner had elected that he would thereupon and without notice or demand be released of all obligations to convey said property and that said agreement and the buyers' rights, interest and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatever. That to comply with said demand or any part thereof within the time aforesaid or at all, the buyers failed, neglected and refused to do.

4. That meanwhile on December 28, 1940, said W. L. Mangus commenced these proceedings and listed among his assets in the schedules attached to his petition herein, Schedule B-1 thereof, said lands and premises, but the court is and at all times herein was wholly without jurisdiction over said property and of said debtor in regard thereto and said property should be stricken from the debtor's schedules of his property herein.

(Signed) Matthew A. Miller.

Subscribed and sworn to before me this 24th day of January, 1941. (Seal.) D. H. Thomas, Notary Public, residing at Salt Lake City, Utah.

[File endorsement omitted.]

In United States District Court

Joinder of Rose L. Mangus—Filed February 6, 1941

The above entitled court heretofore, on the 1st day of February, 1941, having made and entered its order authorizing and empowering Rose L. Mangus to join Walter L. Mangus herein,

Now, Therefore, pursuant to the said order, the said Rose L. Mangus hereby joins in the above entitled matter a-d expressly adopts the petition of Walter L. Mangus for relief under Section 75 of the Bankruptcy Act, schedules A and B attached thereto, in all respects, the same as if she had signed said petition and schedules at the time of the filing herein, and by the adoption of the said petition and sched-[fol. 7] ules, the said Rose L. Mangus hereby asserts and claims all rights that may have accrued as of the date of filing of the said petition and schedules, and prays for relief under Section 75 of the Bankruptcy Act.

J. D. Skeen, E. J. Skeen, Attorneys for Joint Tenant.
Rose L. Mangus, Joint Tenant.

United States of America,
District of Utah, ss:

Rose L. Mangus, being first duly sworn, deposes and says: That she is the person named as joining the above entitled proceeding, that she has seen and examined the petition for relief under Section 75 of the Bankruptcy Act, and the schedules A and B attached thereto. That she knows the contents of the said instruments and adopts them in their entirety and pursuant to the order of the said court and this instrument, becomes a party to the said proceeding.

Rose L. Mangus.

Subscribed and sworn to before me this 4th day of February, 1941. (Seal.) Wendell B. Hammond, Notary Public. My Commission Expires March 16, 1942.

Copy of the foregoing Joinder received this 6th day of February, 1941.

Thomas and Thomas, D. H., Attorneys for Matthew A. Miller.

It is Ordered that the Joinder of Rose L. Mangus be and the same is hereby approved as property filed.

Tillman D. Johnson, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL MOTION OF MATTHEW A. MILLER TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed February 8, 1941.

Comes now Matthew A. Miller and moves the court to strike from the debtor's schedules of property herein the lands and premises situate in Davis County, Utah, set [fol. 8] forth in Schedule B-1 thereof and which are also described in the affidavit of Matthew A. Miller on file herein in support of this motion; and for general relief.

This motion is made upon the affidavit of Matthew A. Miller heretofore filed in support of his first and original motion to strike property from the debtor's schedules and also upon the supplemental affidavit of H. P. Thomas, counsel for said Miller, and without waiving said first and original motion but expressly insisting htereon and reserving and retaining all rights whatever thereunder.

Dated this 8th day of February, 1941.

H. P. Thomas, Daniel H. Thomas, Attorneys for Matthew A. Miller.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed February 8, 1941

STATE OF UTAH,
County of Salt Lake, ss:

H. P. Thomas, being first duly sworn, on oath deposes and says that he is one of counsel for Matthew A. Miller and makes this affidavit in his behalf.

Affiant hereby refers to the affidavit of said Matthew A. Miller verified January 24, 1941 which was heretofore filed herein in support of his motion heretofore made to strike property from the debtor's schedules.

on December 28, 1940, after notice of default and
od referred to in said affidavit of Matthew A. Miller,
r L. Mangus by himself and not joined by said Rose
angus his joint tenant under the agreement referred
said Miller's affidavit, commenced these proceedings,
ecause of the failure of both joint tenants to join
n the court did not acquire and does not have juris-
n of said joint estate nor of the joint tenants thereof
her of them nor of the property or any rights held by
] them in joint tenancy and said proceedings were
effect in regard to said property or estate.
t on January 3, 1941 because of their failure mean-
to comply with said notice and demand said agreement
ll of the right, title and interest of Walter L. Mangus
Rose L. Mangus in said property forthwith and abso-
terminated.
at thereafter said Matthew A. Miller filed herein his
affidavit and motion to strike said property from the
r's schedules, and the same coming on for hearing
uary 1, 1941, the court thereupon ordered the joinder
se L. Mangus herein and further ordered the hearing
id motion to be continued pending such joinder.
at thereafter Rose L. Mangus filed herein an attempted
urported joinder entitled, "Joinder of Rose L. Man-
verified February 4, 1941, but on said date she had
ght, title or interest in said property whatever, the
having theretofore terminated as aforesaid.
t being at all times without jurisdiction of said joint
and the property thereof and of said Walter L. Man-
nd Rose L. Mangus in regard thereto, the court was
without jurisdiction to proceed herein as against said
erty except to strike same from the debtor's schedules
the attempted joinder of said Rose L. Mangus after
ermination aforesaid was and is void and of no effect
gard to said property and the court continues to be
out jurisdicition thereof and of Walter L. Mangus and
L. Mangus in regard thereto and the same should be
ken.

H. P. Thomas.

Subscribed and sworn to before me this 8th day of February, 1941. (Seal.) D. H. Thomas, Notary Public residing at Salt Lake City, Utah.

ile endorsement omitted.]

In United States District Court

Order Denying Motion and Supplemental Motion to Strike Property from Schedules—Filed February 24, 1941

This cause came on for hearing February 1, 1941 on the affidavit and motion of Matthew A. Miller to strike property [fol. 10] from the schedules of Walter L. Mangus, debtor, the sole and only debtor herein at that time, and was thereupon continued for further hearing to February 8, 1941; and on said date was further heard upon said affidavit and motion and also upon the "Joinder of Rose L. Mangus," the supplemental motion of said Miller to strike said property and the affidavit of his counsel H. P. Thomas, Esquire, (said Joinder having been filed February 6, 1941 and said supplemental motion and affidavit of counsel having been filed February 8, 1941 during said continuance); and the court having heard said motions, affidavits and Joinder and the arguments of counsel thereon, H. P. Thomas for Matthew A. Miller and J. D. Skeen for both Walter L. Mangus and Rose L. Mangus, and having duly considered the same and being fully advised in the premises,

Now, Therefore, it is hereby ordered, adjudged and decreed:

1. That said motion of Matthew A. Miller to strike from the schedules herein the real estate mentioned in said motion and described in the affidavit of said Miller supporting said motion, be and is hereby overruled and denied.

2. That said supplemental motion of Matthew A. Miller to strike from the schedules herein said real estate, also be and is hereby overruled and denied.

Done in open court at Salt Lake City, Utah, this 24th day of February, 1941.

Tillman D. Johnson, United States District Judge.

[File endorsement omitted.]

In United States District Court

Notice of Appeal—Filed February 25, 1941

To the Clerk of the above entitled court; to the above named Walter L. Mangus and Rose L. Mangus, and to J. D. Skeen and E. J. Skeen, Esquires, their attorneys:

Take notice that Matthew A. Miller hereby appears to the United States Circuit Court of Appeals for the Tenth Circuit from the order of the United States District Court, [fol. 11] District of Utah, given and made herein the 24th day of February, 1941, overruling and denying his motion and supplemental motion to strike property from the debtors' schedules herein as follows:

1. Appeals from that part of said order overruling and denying his motion to strike the property from said schedules.

2. Appeals from that part of said order overruling and denying his supplemental motion to strike the property from said schedules.

3. Appeals from said order and every part thereof.

Dated: February 25, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

[File endorsement omitted.]

Recital as to Appeal Bond

(Cost Bond on Appeal signed by Matthew A. Miller, as principal, and Roald Amundsen and Willard R. Smith, as sureties, and approved by Tillman D. Johnson, United States District Judge, was filed In United States District Court on February 25, 1941.)

In United States District Court

Appellant Matthew A. Miller's Statement of Points on Appeal—Filed February 26, 1941

Comes now Matthew A. Miller, appellant, and makes this statement of points on which he intends to rely on his ap-

peal to the United States Circuit Court of Appeals for the Tenth Circuit for reversal of the order of the District Court of the United States, District of Utah, made and entered February 24, 1941, overruling and denying his motion and his supplemental motion to strike property from the debtors' schedules herein, and says that there is manifest error in said order in that said Walter L. Mangus and Rose L. Mangus were joint tenants in and by the agreement for the sale of said property to them (which agreement is mentioned and referred to in said motions and in the affidavits [fol. 12] of appellant and of H. P. Thomas, his counsel, in support thereof); that these proceedings were commenced December 28, 1940 by only one of said joint tenants, to-wit, Walter M. Mangus; that thereafter on January 27, 1941 appellant filed his said motion to strike said property; that Rose L. Mangus did not join therein or become party to these proceedings until she filed her "Joinder Of Rose L. Mangus" February 6, 1941, after said agreement of sale and her interest thereunder had terminated January 3, 1941, all as set forth in said affidavit of appellant and said affidavit of his counsel in suport of said motion to strike; and appellant says that the court erred in the particulars hereinafter set forth and for such errors and each of them said order should be reversed, to-wit:

1. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and was thereby wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property.

2. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and did not acquire jurisdiction of said joint estate or the property thereof or of said Rose L. Mangus in regard thereto by her subsequent Joinder herein February 6, 1941; said agreement of

sale and her interest thereunder having previously terminated January 3, 1941 as aforesaid, and the court being at all times without jurisdiction of said joint estate and the property thereof.

3. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

4. The court erred in making and entering said order over-
[fol. 13] ruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

5. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

6. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

7. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

8. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

Dated: February 25th, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

Received copy of the foregoing statement this 25th day of February, 1941.

J. D. Skeen, E. J. Skeen, Attorneys for Walter L. Mangus and Rose L. Mangus.

[File endorsement omitted.]

In United States District Court

Appellant Matthew A. Miller's Designations of Record on Appeal—Filed February 26, 1941

To the Clerk of the above entitled court; to said Walter L. Mangus and Rose L. Mangus, and to Messrs. J. D. Skeen and E. J. Skeen, their attorneys:

Appellant Matthew A. Miller hereby designates the following as the portions of the record and proceedings herein to be contained in the record on appeal to the United States [fol. 14] Circuit Court of Appeals for the Tenth Circuit, notice of which appeal was heretofore duly filed in this cause on the 25th day of February, 1941 with the Clerk of the United States District Court, District of Utah herein:

1. Motion of Matthew A. Miller to strike property from debtors' schedules; said motion dated January 27, 1941.

2. Affidavit in supoprt of motion to strike property from schedules; said affidavit signed by Matthew A. Miller and verified January 24, 1941.

3. Joinder of Rose L. Mangus; said Joinder signed by her and also by her attorneys Messrs. J. D. Skeen and E. J. Skeen and filed February 6, 1941.

4. Supplemental motion of Matthew A. Miller to strike property from debtors' schedules; said motion dated and filed February 8, 1941.

5. Supplemental affidavit in support of motion to strike property from debtors' schedules; said affidavit signed by H. P. Thomas and verified February 8, 1941.

6. Order denying motion and supplemental motion to strike property from debtors' schedules; dated and filed February 24, 1941, and signed by Honorable Tillman D. Johnson, Judge of the United States District Court, District of Utah.

7. Appellant Matthew A. Miller's statement of points on appeal; herewith served and filed.

Dated: February 25, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

Received copy of the foregoing this 25th day of February, 1941.

J. D. Skeen, E. J. Skeen, Attorneys for Walter L. Mangus and Rose L. Mangus.

[File endorsement omitted.]

[fol. 15] Clerk's Certificate to foregoing transcript omitted in printing.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

ORDER RELATIVE TO SUPPLEMENTAL RECORD—August 9, 1941

On the court's own motion it is hereby ordered that the clerk of the District Court of the United States for the District of Utah make and certify to this court a true copy of the petition in bankruptcy filed by Walter L. Mangus, together with supporting schedules.

It is further ordered that the clerk of this court forthwith transmit to the clerk of the District Court of the United States for the District of Utah a certified copy of this order.

[fol. 16] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 15527

In the Matter of

MATTHEW A. MILLER

v.

WALTER L. MANGUS, et al.

PETITION, SECTION 75—Filed December 28, 1940

To the Honorable Tillman D. Johnson, Judge of the District Court of the United States for the District of Utah:

The petition of Walter L. Mangus, of Farmington, in the County of Davis, and District and State of Utah, respectfully represents:

That he is personally bona fide engaged primarily in farming operations (or that the principal part of his income is derived from farming operations) as follows: Chicken raising.

That such farming operations occur in the county (or counties) of Davis within said judicial district; that he is insolvent (or unable to meet his debts as they mature) and

that he desires to effect a composition or extension of time to pay his debts under section 75 of the Bankruptcy Act.

That the schedule hereto annexed marked "A" and verified by your petitioner's oath, contains a full and true statement of all of his debts and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

[fol. 17] That the schedule hereto annexed, marked "B" and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore, your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

Walter L. Mangus, Petitioner. J. D. Skeen, E. J. Skeen, Attorney.

United States of America,
District of Utah, ss:

I, Walter L. Mangus, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Walter L. Mangus, Petitioner.

Subscribed and sworn to before me this 28th day of December, A. D. 1940. E. J. Skeen, Notary Public. My commission expires June 9, 1944. (Seal.)

Approved: Tillman D. Johnson, Judge.

In the Matter of WALTER L. MANGUS, Debtor

In Proceedings for a Composition or Extension

At Salt Lake City in said District, on the 4th day of January, 1941, before the Honorable Tillman D. Johnson, judge of said court, the petition of Walter L. Mangus, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

Witness the Honorable Tillman D. Johnson, judge of said court, and the seal thereof, at Salt Lake City, in said District on the 4th day of January, A. D., 1941.

W. B. Wilson, Clerk, By Helen L. Taylor, Deputy Clerk. (Seal.)

[fol. 18] SCHEDULE A—STATEMENT OF ALL DEBTS OF PETITIONER

Schedule A-(1)

Statement of All Creditors Who Are to Be Paid in Full, or to Whom Priority Is Secured by Law

Claims which have priority	Names of Creditors and Residence	Where and When Contracted	Nature and consideration of the debt, and whether contracted as partner or joint contractor and if so, with whom.	Amount
				$ c
(1) Taxes and debts due and owing to the United States.	None			
(2) Taxes due and owing to the State of Utah or to any county, district, or municipality thereof, or to any other state or territory.	Davis County, Utah	Davis County, 1939, 1940	General Taxes	90 00
(3) Wages due workmen, clerks or servants, to an amount not exceeding $300 each, earned within three months before filing the petition.	None			
(4) Other debts having priority by law.	None		Except as otherwise stated, the consideration of each of the foregoing debts is of the full value of the amount as above set forth, and were contracted solely by petitioner, and were all on open account.	
	Except as stated, full names of creditors unknown.	Except as stated, the dates when and the places where contracted unknown.	Total.....	90 00

Walter L. Mangus, Petitioner.

[fol. 19] Schedule A-(2)—Creditors Holding Securities

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to debtors, and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

Names of Creditors and Residence	Description of Securities	When and where debts were contracted	Value of Securities	Amount of Debts
			$ c	$ c
Matthew A. Miller, 828 Ashton Avenue, Salt Lake City, Utah	Real Estate Contract	November 3, 1938 Farmington, Utah	4000 00	3000 00
	Except as otherwise stated the foregoing debts were on open account the consideration of each of the same is of the full value of the amount as above set forth, and were contracted solely by petitioner.			
Except as stated, full names of creditors unknown.		Except as stated, the dates and places where contracted unknown.		
		Total.....		

Walter L. Mangus, Petitioner.

[fol. 20] Schedule A-(3)—Creditors Whose Claims Are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full and any claim by way of set-off stated in the schedule of property.]

Names of Creditors and Residence	When and where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person and if so, with whom. (Date of note must be given.)	Amount
None			$ c
		Forward.....	

[fol. 21] Schedule A-(4)—Liabilities on Notes or Bills Discounted Which Ought to Be Paid by the Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as endorser.]

Names of holders as far as known and residences	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person, and, if so with whom.	Amount
			$ c
None			
		Except as otherwise stated, the consideration of each of the foregoing debts is of the full value of amount as above set forth, and were contracted solely by petitioner.	
Except as stated, full names of holders on this page unknown.	Except as stated, all debts on this schedule were contracted at.....	Total.....	

Walter L. Mangus, Petitioner.

[fol. 22] Schedule A-(5)—Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated with his residence. Same particulars as to other commercial paper.]

Names of holders and residence	Name and residence of person accommodated	Place where contracted	Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
None				$ c
		Except as stated, the dates when contracted unknown, and all debts on this schedule were contracted at....	Except as stated, the petitioner received no consideration for debts on this page, and they were contracted solely by petitioner.	
Except as shown, full names of holders on this page unknown.		.....	Total.....	

Walter L. Mangus, Petitioner.

Oath to Schedule A

UNITED STATES OF AMERICA,
District of Utah, ss:

On this 28 day of December, A. D. 1940, before me personally came Walter L. Mangus, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to

ement of all his debts, in accordance with the acts ess of March 3, 1933 relating to debtors.
ubscribed and sworn to before me this 28th day of December, A. D. 1940. E. J. Skeen, Notary Public. (Official Character.) My Commission Expires June 9th, 1944.

Schedule B—Statement of All Property of Debtor

Schedule B-(1)—Real Estate

description of all real estate debtor, or held by him.	Incumbrances thereon, if any and dates thereof	Statement of particulars relating thereto	Estimated Value
point in the center of a own as 4th East Street, 3.8 rods East and 42.7 m the Southwest corner Section 20, Township 2 East, Salt Lake Meridi- g thence S. 81° E 23.4 12° 05′ E 9.3 rods; 5′ W. 230.7 feet; thence at 80 feet North of the line of Grantors land; W 195 feet to center of ; thence South along the street 80 feet to the ing.	Real estate contract	Balance on purchase contract	$ c 4000.00
		Forward.....	4000.00

[fol. 24] Schedule B-(2)—Personal Property

		$ c
a.—Cash on hand.....	None	
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None	
c.—Stock in trade, in.....business of.....at.....of the value of.....	None	
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.....	Household furniture and wearing apparel	150.00
e.—Books, prints, and pictures, viz.....	None	
f.—Horses, cows, sheep and other animals (with number of each), viz.	1 cow 500 chickens	75.00 250.00
	Forward.....	475.00

(OVER)

[fol. 25] Schedule B-(2)—Personal Property—Continued

		$ c
g.—Carriages and other vehicles, viz	None	
h.—Farming stock and implements of husbandry, viz	Cultivator and small tools	50.00
i.—Shipping, and shares in vessels, viz	None	
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.	None	
l.—Patents, copyrights, and trade marks viz	None	
m.—Goods or personal property of any other description, with the place where each is situated, viz	None	
	Except as stated, all property mentioned in this schedule is located at	
	Forward	50.00

Walter L. Mangus, Petitioner.

[fols. 26-27] Schedule B-(3)—Choses in Action

		$ c
a.—Debts due petitioner on open account	None	
b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds	None	
c.—Policies of insurance	None	
d.—Unliquidated claims of every nature, with their estimated value	None	
e.—Deposits of money in banking institutions and elsewhere	None	
	Except as stated, all property mentioned in this schedule is in the possession of petitioner at his home / office at	
	.....	
	Total	

Walter L. Mangus, Petitioner.

[fol. 28] **Schedule B-(4)**

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the debtor.]

General Interest	Particular Description	Supposed value of my interest
		$ c
Interest in Land	None	
Personal Property	None	
	Total	
Property in money, stocks, shares, bonds, annuities, etc	None	
Rights and powers, legacies and bequests	None	
	Forward	

(OVER)

Schedule B-(4)—Continued

[fol. 29] Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the debtor.]

General Interest	Particular Description	Supposed value of my interest
		$ c
Property heretofore conveyed for benefit of creditors.		
What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefits of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.....	None	
	Total.....	
		Amount realized from proceeds of property conveyed
What sum or sums have been paid to counsel and to whom, for services rendered to or to be rendered in this proceeding.....	None	$ c
	Total.....	

Walter L. Mangus, Petitioner.

[fol. 30] Schedule B-(5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy giving each item of property and its valuation; and if any portion of it is real estate its location, description and present use.

		Valuation
		$ c
Military uniform, arms and equipments	None	
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption	Equity in real estate described in Schedule B 1	800 00
	Household furniture and wearing apparel	150 00
	Cultivator and small tools	50 00
	1 cow	75 00
	500 chickens	250 00
	All claims as exempted under provisions of Section 104-37-13 R.S.U. 1923.	
	Total	$1,325 00

Walter L. Mangus, Petitioner.

[fol. 31] Schedule B-(6)

Books, Papers, Deeds and Writings Relating to Debtor's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage, and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth with the reason for their custody of the same.

Books	Deeds	Papers
None	None	None

Walter L. Mangus, Petitioner.

Oath to Schedule B

United States of America,
District of Utah, ss:

On this 28th day of December, A. D. 1940, before me personally came Walter L. Mangus, the person mentioned in and who subscribed to the foregoing schedule, and, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress of March 3, 1933, relating to debtors.

E. J. Skeen, Notary Public. (Official Character.)
(Seal.) My Commission Expires June 9th, 1944.

[fol. 32] SUMMARY OF DEBTS AND ASSETS

(From the Statements of Debtor, in Schedules A and B)

Schedule A.	1	(1)	Taxes and Debts Due United States	
" "	1	(2)	Taxes due States, Counties, Districts and Municipalities.	90.00
" "	1	(3)	Wages.	
" "	1	(4)	Other debts preferred by law.	
Schedule A.	2		Secured claims.	3,200.00
Schedule A.	3		Unsecured claims.	
Schedule A.	4		Notes and Bills which ought to be paid by other parties thereto.	
Schedule A.	5		Accommodation paper.	
			Schedule A. Total.....	3,290.00
Schedule B.	1		Real Estate.	4,000.00
Schedule B.	2—a.		Cash on hand.	
" "	2—b.		Bills, promissory notes and securities.	
" "	2—c.		Stock in trade.	
" "	2—d.		Household goods, etc.	150.00
" "	2—e.		Books, prints and pictures.	
" "	2—f.		Horses, cows and other animals.	325.00
" "	2—g.		Carriages and other vehicles.	
" "	2—h.		Farming stock and implements.	50.00
" "	2—i.		Shipping and shares in vessels.	
" "	2—k.		Machinery, tools, etc.	
" "	2—l.		Patents, copyrights and trademarks.	
" "	2—m.		Other personal property.	
Schedule B.	3—a.		Debts due on open account.	
" "	3—b.		Stocks, negotiable bonds, etc.	
" "	3—c.		Policies of insurance.	
" "	3—d.		Unliquidated claims.	
" "	3—e.		Deposits of money in banks and elsewhere.	
Schedule B.	4		Property in reversion, remainder, trust, etc.	
Schedule B.	5		Property claimed to be excepted. $1,325.00	XXXXX
Schedule B.	6		Books, deeds and papers. Put money excepted here only	
			Schedule B. Total.....	4,525.00

(over)

[fol. 33] [File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

ORDER OF SUBMISSION—November 13, 1941

This cause came on to be heard, Hadlond P. Thomas, Esquire, appearing for appellant, J. D. Skeen, Esquire, appearing for appellees.

[fol. 34] Thereupon argument was commenced by counsel and continued to the hour of adjournment.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

ORDER OF SUBMISSION—November 14, 1941

This cause came on further to be heard, Hadlond P. Thomas, Esquire, appearing for appellant, J. D. Skeen, Esquire, appearing for appellees.

Thereupon argument by counsel was concluded and the cause submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

OPINION—January 12, 1942

Hadlond P. Thomas (Daniel H. Thomas was with him on the brief) for Appellant.

J. D. Skeen and E. J. Skeen for the Appellees.

On Rehearing

Before Phillips, Huxman and Murrah, Circuit Judges

MURRAH, Circuit Judge, delivered the opinion of the court:

This is an appeal from an order of the District Court for the District of Utah, sustaining its jurisdiction over certain property included within the schedule of the debtor in a farmer-debtor proceedings under Section 75 of the Bankruptcy Act. (Title 11, Section 203, U. S. C. A.)

By motion to strike, the appellant challenges the jurisdiction of the bankruptcy court to administer certain property scheduled in the proceedings under Section 75 of the Act. The facts, as disclosed by the motions of the appellant, and affidavits in support thereof, show that on or about the 3rd day of November, 1938, one James K. Miller, as the seller, entered into a contract in writing with Walter L. [fol. 35] Mangus, the debtor here, and his wife, Rose L. Mangus, by the terms of which the seller agreed to sell to the buyers, Walter L. Mangus and Rose L. Mangus, "as joint tenants with full rights of survivorship and not as

tenants in common" the tract of land involved in this appeal.

The buyers agreed to pay the sum of $4,000.00; $500.00 in cash and $35.00 on the 3rd day of each month thereafter, commencing December 3, 1938. The appellant, Matthew A. Miller, acquired the contract from the original seller. The contract provided that time was the essence thereof, and on failure of the buyers to comply with the terms, or to make any payment or payments when due, or in thirty days thereafter, the seller would be released from all obligations in law and equity, to convey the said property; that all payments made thereon would be forfeited to the seller as liquidated damages for nonperformance, and the seller might re-enter and take possession of the said premises and the buyers would thus become tenants at will.

On November 30, 1940, the buyers were in default for "many months" more than thirty days, whereupon the seller notified them in writing of such default; demanded that they make full payment on or before January 3, 1941, of all sums due on the said contract or forfeit all rights thereunder.

The buyers failed to comply, but on December 28, 1940, Walter L. Mangus, without reference to his cotenant, commenced these proceedings in bankruptcy under Section 75, listing among his assets, the land in question. On January 27, 1941, the appellant filed his motion to strike from the debtor's schedule of his property, the land in question and, in support thereof, filed an affidavit narrating the facts substantially as herein stated.

Nowhere in the record are these facts traversed or disputed. But pursuant to leave granted on February 1, 1941, and on February 6, 1941, Rose L. Mangus filed what is termed a "Joinder of Rose L. Mangus," in which she attempted to join and expressly adopt the petition of Walter L. Mangus for relief under Section 75 of the Bankruptcy Act (making reference to Schedules A and B), the same as if she had signed the said petition and schedules at the time they were filed by her joint tenant. She claimed ac- [fol. 36] crued rights as of the date of the filing of the petition, and for relief under Section 75 of the Bankruptcy Act.

On the 8th day of February, 1941, the appellant seller, by supplemental motion and affidavit by his attorney, renewed his motion to strike the described property from the schedules, and again challenged the jurisdiction of the court to

administer the property in bankruptcy under Section 75, contending that the "Joinder of Rose L. Mangus," filed on February 6, 1941, did not confer jurisdiction on the court to administer the property in bankruptcy because on that date Rose L. Mangus, having forfeited all right, title, and interest in the property could not invoke the jurisdiction of the bankruptcy court; contending that the court was without jurisdiction of the joint estate and the property scheduled, and prayed that the said property be stricken from the proceedings.

On February 24, 1941, the court having considered the original and supplemental Motion to Strike and the Affidavit in support thereof, overruled and denied them. From this order the appellant has appealed.

The facts set forth in the affidavits of the appellant were not challenged or refuted on the record, and hence they stand admitted.

When Walter L. Mangus commenced proceedings under Section 75 on December 28, 1940, he and his wife, Rose L. Mangus, were the owners of a contract for a deed or a contract for sale of the land in question, as joint tenants with the right of survivorship and not tenants in common. The contract was in default but had not been forfeited. They were, therefore, jointly seized of an interest in property which was subject to the jurisdiction of a court of Bankruptcy under Section 75.

It is no longer open to question that subsections (n) and (o), 11 U. S. C. A., are sufficiently broad to include the interest of the holder of a contract for a deed or a conditional sales contract when such contract is in default but before forfeiture. From and after the date of the filing of the petition in bankruptcy the bankruptcy court acquires exclusive and paramount jurisdiction over the property, with the full [fol. 37] power to administer the same in accordance with the provisions of the Act.[1] Wright v. Union Central Life

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[1] Section 203, Title 11, U. S. C. A.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding the same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive juris-

Insurance Company, 304 U. S. 502 and Kalb v. Feuerstein, 308 U. S. 433.

It is equally plain that the appellant having served written notice of forfeiture as stipulated, time having been made the essence of the contract, and no extension of time having been granted, the right, title, and interest of Rose Mangus was forfeited; from and after January 3, 1941, and she thereafter had no justiciable interest in the property.[2] Her equity,

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diction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, * * *."

* * * * * * *

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

* * * * * * *

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land; * * *

* * * * * * *

"(6) * * * conditional sale agreement, crop payment agreement, or mortgage."

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[2] Manson v. Apartment & Hotel Inv. Co., 218 P. 109; Malmstrom v. Second East Apartment Co., 278 P. 811; Tullis v. Pratt, 42 P. 2d 222; American Mortgage Co. v. Logan, 7 P. 2d 953; Wright v. Union Central Life Ins. Co., supra, and Vol. 1, Pomeroy's Equity Jurisprudence, Section 455. Cf. Kohler v. Lundberg, 180 P. 590; Parker v. California State Life Ins. Co., 40 P. 2d 175 and Columbia Airways v. Stevens, 14 P. 2d 984. See, also, 40 A. L. R. page 182.

or interest in the property having been effectively cut off, the attempted joinder was ineffectual to confer jurisdiction of the bankruptcy court over her estate in the property. Wright v. Union Central Life Ins. Co., supra, and Tullis v. Pratt, supra. The attempted joinder neither added to, nor took from the jurisdiction of the bankruptcy court.

[fol. 38] It follows that the jurisdiction of the bankruptcy court over the estate of Rose L. Mangus must fail, unless the petition and schedule of Walter L. Mangus, without reference to his cotenant operated to confer jurisdiction of the bankruptcy court over the estate of his cotenant by virtue of the applicable provisions of the Bankruptcy Act (Section 203 (s) (4) Title 11, U. S. C. A.)[3]

The provisions of the Bankruptcy Act (Section 203 (s) (4) Title 11, U. S. C. A.) are made applicable to joint tenants, but the parties have failed to avail themselves of this right until one joint tenant was no longer seized of a justiciable interest in the property. The record negatives any intention of either of them to timely avail themselves of any right accorded by the provisions of the statute noted. (Section 203 (s) (4) Title 11, U. S. C. A.)

Clearly Rose L. Mangus, although having a right to join in the proceedings while she had an interest capable of protection failed to avail herself of that right. As a result the estate of Rose L. Mangus in the property was effectively severed by forfeiture on January 3, 1941, and by such severance the joint tenancy was terminated and the appellant Miller became reinvested with her estate in the property.

The question presented under this rather anomalous state of facts is whether the failure of the court to acquire jurisdiction over the entire estate is fatal to the jurisdiction of the court over the estate of Walter L. Mangus. In other words, is Rose L. Mangus an indispensable party to the proceedings? This question can best be answered by a practical consideration of the legal effect of a final judgment between the parties as they are now cast. It is well settled that where an indispensable party is absent the court may

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[3] Sec. 75 (s) (4) of the Bankruptcy Act. 11 U. S. C. A. 203. "* * * The provisions of this Title shall be held to apply also to partnerships, common, entirety, joint, community ownerships, * * * and any such parties may join in one petition."

not grant any relief. See Franz v. Buder, 8 Cir., 11 F. 2d 854; Peterson v. Sucro, 4 Cir., 93 F. 2d 878, and Barney v. Baltimore City, 6 Wall. (73 U. S.) 280. See, also, In re Harris, 15 F. Supp. 404, and Shields v. Barrow, 15 L. Ed. 158. Bankruptcy is an equitable proceeding, and the rule [fol. 39] is applicable here. Vol. 1, Remington on Bankruptcy, Section 23, Fourth Edition and In re Harris supra.

An estate created by a joint tenancy is subject to alienation, levy and execution and is therefore susceptible of administration under the general bankruptcy law. Tiffany Real Property, Vol. 2, Section 425; Ames v. Chandler, 164 N. E. 616; In re Carpenter, 5 F. Supp. 101; Thornburg v. Wiggins, 34 N. E. 999; In re Wallace, 22 F. 2d 171, and White, Trustee, v. Stemp, 266 U. S. 310. Cf. In re Brown, 60 F. 2d 269. Under general bankruptcy the trustee becomes seized with whatever interest the bankrupt owned in the property and is charged with the duty of administering the same for the benefit of the creditors. It contemplates a marshalling and sale of the assets of the bankrupt, and the distribution of the proceeds to the creditors as their interest appear.

Thus it is conceivable that the estate of Walter L. Mangus would be the proper subject matter of a general bankruptcy proceedings, absent jurisdiction of the bankruptcy court over the estate of the joint tenant, 11 U. S. C. A. 110 (a). In re Brown, supra. Cf. In re Carpenter, supra. But a proceedings under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r) does not operate to pass title from the bankrupt to the trustee or the bankruptcy court, but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a moratorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings. Wright v. Union Central Life Ins. Co., supra.

This is what Walter L. Mangus seeks to accomplish here. Suppose then that he is permitted to invoke the jurisdiction of the court over his estate and in his attempt to adjust and effect a compromise of his debts what are his rights and what are the rights of Miller? The contract between Walter L. Mangus, Rose L. Mangus, and Miller provides for the payment of the sum of $4,000.00 for a deed to certain property, the deed to be delivered upon the payment of the contract price. In effecting an adjustment and compromise shall Mangus be required to pay the entire purchase price

for an estate in common with the seller, which could be no more than a one-half interest, because Miller is now seized [fol. 40] of the interest of Rose L. Mangus over which the court has no jurisdiction, or shall Miller be required to accept one-half of the unpaid indebtedness for one-half interest in the property, to be held as tenant in common with Mangus? It becomes readily apparent that any final order or judgment which the court could make in the premises would be inconsistent with equity; in contravention of the constitutional rights of the parties, and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable.

It must be remembered that in the effectuation of the purposes of Section (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r), the rights of creditors are essentially and necessarily safeguarded in accordance with established judicial principles. It is not within the constitutional power of a court of bankruptcy to completely abrogate contractual rights in the effectuation of the purposes of the Act. W. B. Worthen Co. v. Thomas, 292 U. S. 426; Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U. S. 648; Louisville Bank v. Redford, 295 U. S. 555; Wright v. Vinton Branch, 300 U. S. 440; John Hancock Ins. Co. v. Bartels, 308 U. S. 180, and Borchard v. California Bank, 310 U. S. 311. See Vol. 1, Remington on Bankruptcy, Section 14, Fourth Edition.

We conclude that Rose L. Mangus, as the joint tenant of Walter L. Mangus, is an indispensable party to the proceedings, because without her presence, or jurisdiction over the estate she forfeited, the court is powerless to administer the property and to render a final judgment between the parties as they are now cast, consistent with the fundamental principles of right and justice. It follows that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r).

The case is reversed and remanded with instructions to strike the property from the schedule.

[fols. 41-42] IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

JUDGMENT—January 12, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with instructions to strike from the schedule the property which was the subject matter of a contract dated November 3, 1938, between James K. Miller, as the seller, and Walter L. Mangus and his wife, Rose L. Mangus, by the terms of which the seller agreed to sell to the buyers, Walter L. Mangus and Rose L. Mangus, the property as joint tenants with full rights of survivorship and not as tenants in common; and that Matthew A. Miller, appellant, have and recover of and from Walter L. Mangus and Rose L. Mangus, appellees, his costs herein.

NOTE RE ISSUANCE OF MANDATE

(On February 17, 1942, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.)

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 25, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 46,466. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 74. Walter L. Mangus and Rose L. Mangus, Petitioners, vs. Matthew A. Miller. Petition for a writ of certiorari and exhibit thereto. Filed April 11, 1942. Term No. 74 O. T. 1942.

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 11 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. ~~1138~~ 74

WALTER L. MANGUS AND ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1138

WALTER L. MANGUS AND ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER.

PETITION FOR WRIT OF CERTIORARI.

The petition of Walter L. Mangus and Rose L. Mangus respectfully shows to the Court:

That on the 3rd day of November, 1938 they contracted to purchase from one James K. Miller, farm lands in Davis County, State of Utah, and to pay therefor the sum of $4000. The said contract described petitioners "as joint tenants with full rights of survivorship and not as tenants in common" (R. 5). Petitioners paid $500 cash at the time of the execution of the contract and installments of $35.00 per month. Petitioners defaulted in making one or more payments on account of the purchase price of the property, for a period of thirty days and on the 30th day of November, 1940, Matthew A. Miller, who had succeeded the seller of the said property to petitioners, served notice upon petitioners, by the terms of which he demanded "that they fully make up and pay on or before January 3, 1941 all payments and other sums which might then be due and owing on said contract by them and that they thereafter, at all times,

strictly pay and perform said contract as the same required them to do and in case of their failure so to do on or before said January 3, 1941, that petitioner (seller) had elected that he would thereupon and without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interests and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatsoever" (R. 5).

On December 28, 1940, petitioner, Walter L. Mangus, filed a petition, after approval, with schedules attached, in the District Court of the United States for the District of Utah, praying for relief under Section 75 of the Bankruptcy Act. On January 27, 1941, Matthew A. Miller filed a motion to strike the real estate covered by the contract of purchase from the debtor's schedules and supported the motion with the affidavit of Matthew A. Miller, setting forth the making of the contract, the descriptions of the land, the default and the notice. On the 4th day of February, 1941, petitioner, Rose L. Mangus, upon leave of court, filed a joinder in the proceedings of her husband, Walter L. Mangus. Thereupon, Matthew A. Miller filed another motion to strike the said property from the schedules, supporting it with an affidavit substantially the same as the original affidavit (R. 6).

On the 24th day of February, 1941, after hearing, the District Court made and entered an order denying the motion to strike (R. 9). Thereupon, Matthew A. Miller appealed to the Circuit Court of Appeals for the Tenth Circuit. The appeal specified as error the denial of the motion to strike the real estate for the reason that the court was "wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property" (R. 11-12).

The Circuit Court on rehearing on January 12, 1942, reversed the District Court with instructions to strike the property from the schedules. The opinion of the Circuit

Court of Appeals on rehearing has been published and is set out on page 34 of the record, 125 Fed. (2d) Advance Sheet 3, page 507.

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals under Section 240 of the Judicial Code, 28 U. S. C. A., Section 347, page 359.

The following questions are presented by this petition:

1. Did the Circuit Court of Appeals err in holding that Rose L. Mangus was an indispensable party to the proceeding under Section 75 of the Bankruptcy Act and that her failure to join in the petition in the first instance was fatal to the jurisdiction of the District Court over the property of Walter L. Mangus.

2. Did the Circuit Court of Appeals err in holding that the defect of parties, if any, in the institution of the proceeding was not cured by the subsequent joining of Rose L. Mangus under order of the court.

3. Did the Circuit Court of Appeals err in holding that the rule in general bankruptcy, that whatever interest the bankrupt has is susceptible of administration, is not applicable under the provisions of Section 75 of the Bankruptcy Act.

4. Did the Circuit Court of Appeals err in holding that an undivided one-half interest in the property passed to Miller by the service of notice upon Rose L. Mangus, and that Walter L. Mangus did not have the right to pay the full purchase price of the property and to acquire the full ownership of the real estate, subject only to any equity that Rose L. Mangus, alone, might have had.

5. Did the Circuit Court of Appeals err in holding that "any final order or judgment which the court could make in the premises would be inconsistent with equity, in con-

travention of the Constitutional rights of the parties and contrary to the fundamental purposes of the Bankruptcy Act".

6. Did the Circuit Court of Appeals err in holding that the difficulties presented were insurmountable.

7. Did the Circuit Court of Appeals err in holding that it was not within the Constitutional powers of the Court of Bankruptcy to administer the property of Walter L. Mangus and that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under Section 75 of the Bankruptcy Act.

Date of judgment sought to be reviewed, January 12, 1942.

Date of application for writ of certiorari, March —, 1942.

Respectfully submitted,

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1138

WALTER L. MANGUS AND ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER.

SUPPORTING BRIEF.

This Court is given authority by Section 240 of the Judicial Code, 28 U. S. C. A., Section 347, page 359, to issue the writ of certiorari in this case.

The writ should be granted because:

The Circuit Court of Appeals has decided an important question of Federal Law, which has not, so far as known, been settled by this Court, and has decided the question in a way in conflict with the applicable decisions of this Court.

Section 75 (n) of the Bankruptcy Act reads:

> "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding the same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, in-

cluding, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

Subsection (O) (2) enjoins proceedings for the cancellation of the contract.

It will be observed that the proceeding covers "all of his property and it is subject to the exclusive jurisdiction of the court". The Circuit Court has found the estate of Walter L. Mangus was in fact a legal estate "subject to alienation, levy and execution and is therefore susceptible of administration under the General Bankruptcy Law". Wherein does the statute differentiate between an estate subject to administration under the General Law and estates subject to administration under Section 75 of the Act? The estate of Mangus is certainly comprehended by the all inclusive words of the statute. If there could have been any possible question about the statute covering all of the property of the debtor in harmony with its express terms, it is certainly eliminated by the decisions of this Court in *Elizabeth Wright, et al.*, v. *Gusta Logan, et al.*, decided January 9, 1942 reported in Advance Sheet No. 7 of 86 L. Ed. 443. In dealing with the question of the debtor's redemption right, which does not in principle differ from this debtor's contract right, the Court said:

"It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under Section 75 continued to be a part of their assets subject to administration by the Bankruptcy Court. For 75(n) subjects all of the farmer-debtor assets specifically including rights of redemption to the jurisdiction of the Bankruptcy Court and provides 'that the period of redemption shall be extended for the period necessary for the

purpose of carrying out the provisions of this Section'."

Citing *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502, 513-516, 82 L. Ed. 1490, 1499-1501, 58 S. Ct. 1025, 26 Am. Bankr. Rep. (NS) 950.

By the express terms of subsection (O), proceedings "for cancellation, rescission, or specific performance of an agreement, for sale of land or recovery of possession of land" are enjoined. Furthermore, this Court has said:

> "And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (John Hancock Mut. L. Ins. Co. *v.* Bartles, supra [308 U. S. 180, 84 L. Ed. 180, 181, 60 S. Ct. 221, 41 Am. Bankr. Rep. (NS) 296] Kalb *v.* Feuerstein, 308 U. S. 433, 84 L. Ed. 370, 60 S. Ct. 343, 41 Am. Bankr. Rep. (NS) 501, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act."
>
> *Wright* v. *Union Cent. Life Ins. Co.*, 311 U. S. 273, 85 L. Ed. 184.

Nevertheless, the Circuit Court of Appeals has injected into the case an exception to the express words of the statute that if carried to a logical conclusion would, without the slightest justification or support in the decisions of this Court, eliminate many debtor's petitions which come within the very letter of the statute.

It is respectfully submitted that the writ should be granted and the judgment of the Circuit Court of Appeals reversed.

J. D. Skeen,
E. J. Skeen,
Attorneys for Petitioners.

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No. 74

The Supreme Court of the United States

OCTOBER TERM, 1942.

WALTER L. MANGUS AND
ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

J. D. SKEEN,
E. J. SKEEN,
ATTORNEYS FOR PETITIONERS.

PETITION FOR CERTIORARI FILED APRIL 11, 1942.
CERTIORARI GRANTED MAY 25, 1942.

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The Supreme Court of the United States

OCTOBER TERM, 1942.

WALTER L. MANGUS AND
ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

JURISDICTIONAL GROUNDS

Section 240 of the Judicial Code, 28 U.S.C.A., Sec. 347, authorizes this Court to issue a writ of certiorari and to thereupon determine the cause with the same power and authority and with like effect, as if the cause had been brought up by unrestricted writ of error or appeal.

Section 24 (c) of the Bankruptcy Act as Amended June 22, 1938, provides:

> The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals of the District of Columbia in proceedings under this title in accordance

with the provisions of the laws of the United States now in force or such as may hereafter be enacted. 11 U. S. C. A. Sec. 47, as amended June 22, 1938, C. 575, Sec. 1, 52 Stat. 854.

STATEMENT OF THE CASE

The petitioners seek the reversal of the judgment of the United States Circuit Court of Appeals for the Tenth Circuit which directed that certain real estate be stricken from the debtors' schedules in a proceeding under Section 75 of the Bankruptcy Act. The reference to the official report of the opinion is

125 F. (2d) 507.

Walter L. Mangus filed a petition for relief under Section 75 of the Bankruptcy Act, 11 U.S.C.A, Sec. 203, on December 28, 1940, scheduling land subject to an indebtedness of $3000 on a contract of sale. (R. 18). The contract was originally between James K. Miller, vendor, and Walter L. Mangus and Rose L. Mangus, his wife, purchasers, as "joint tenants with full rights of survivorship and not as tenants in common." Subsequently, James K. Miller assigned his interest in the contract to the respondent, Matthew A. Miller. (R. 4).

On January 27, 1941, the respondent filed a motion to strike from the schedules the real estate described in the contract. (R. 3).

The motion was supported by an affidavit of Matthew A. Miller in which it is alleged that the petitioners contracted, on November 3, 1938, to purchase said real estate for $4000, payable $500 cash, and the balance in installments of $35 a month; that the land subject to the contract and the contract were transferred to affiant; that the contract provides for termination upon default in the making of

payments; that on November 30, 1940, the buyers, being in default, the vendor notified them of the default and demanded that they fully make up and pay

> "on or before January 3, 1941, all delinquencies, and that in case of their failure so to do that the vendor would, without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interest and possession in said property would thereupon forthwith terminate and end, and be of no further force or effect whatever."

It is then alleged that the buyers failed to pay on or before the date set; that Walter L. Mangus filed his proceeding herein and scheduled the property described in the contract, but that the court was wholly without jurisdiction over said property and that it should be stricken from the schedules. (R. 4-5).

On February 6, 1941, Rose L. Mangus adopted the petition and schedules of Walter L. Mangus and joined the proceeding. (R. 6). Her joinder was authorized and was by order, dated February 6, 1941, approved by the District Court. (R. 7).

On February 8, 1941, respondent filed a supplemental motion, for an order striking the property from the schedules. It is alleged in the supporting affidavit, after reciting the facts hereinabove detailed, that the court acquired no jurisdiction because of the failure of both joint tenants to join when the proceeding was commenced; that at the time Rose L. Mangus joined in the proceeding, she had no interest in the property, and that the court "continues to be without jurisdiction thereof." (R. 7-8).

On February 24, 1941, the District Court denied both the motion and supplemental motion to strike. (R. 9). Matthew A. Miller appealed to the United States Circuit Court of Appeals for the Tenth Circuit. The judgment was affirmed as to Walter L. Mangus and reversed as to

Rose L. Mangus. The opinion is not reported. A petition for rehearing filed by Miller was granted anl after rehearing, the Circuit Court of Appeals, reversed the judgment of the District Court and remanded the case with instructions to strike the property from the schedule. (R. 31-38).

A petition for writ of certiorari was filed on April 11, 1942, and was granted on May 11, 1942.

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in holding that Rose L. Mangus was an indispensable party to the proceeding under Section 75 of the Bankruptcy Act, and that her failure to join in the petition in the first instance was fatal to the jurisdiction of the District Court over the property of Walter L. Mangus.

2. The Court erred in holding that any defect in parties was not cured by the subsequent joining of Rose L. Mangus under order of the court.

3. The Court erred in holding that the rule in general bankruptcy that whatever interest the bankrupt has in property is susceptible of administration, is not applicable to Section 75 of the Bankruptcy Act.

4. The Court erred in holding that upon the expiration of the time given in the notice of forfeiture any interest of Rose L. Mangus in the property passed to Miller, and that Walter L. Mangus did not have the right to pay the full purchase price of the property and to acquire the full ownership of the real estate subject only to any equity that Rose L. Mangus alone might have had.

5. The Court erred in holding that "—any final order or judgment which the Court could make in the premises would be inconsistent with equity, in contraven-

tion of the Constitutional rights of the parties and contrary to the fundamental purposes of the Bankruptcy Act—," that the difficulties were insurmountable, and that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under the Act.

ARGUMENT

ALL PROPERTY OF A FARMER-DEBTOR IS SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT.

It was clearly the intention of Congress to subject all of the property of a petitioning farmer-debtor under Section 75 of the Bankruptcy Act to the exclusive jurisdiction of the Federal Court. Section 75 (n) provides in part:

> The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition. 11 U. S. C. A., Section 203 (n).

Section 75 (o) effectually protects the ownership and possession of the debtor's property until he has had an

opportunity to meet with creditors and to make a composition and extension proposal as provided by the Act.

> Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:
>
> (1). Proceedings for any demand, debt, or account, including any money demand;
>
> (2). Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land.
> 11 U. S. C. A., Section 203 (o).

It has been held by this Court that these provisions granted to the bankruptcy court

> ". . . exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts."
>
> Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370; 60 S. Ct. 343; 41 Am. Bankr. Rep. (N. S.) 501.

It was held in the recent case of

> Wright v. Logan, 62 S. Ct. 508; 86 L. Ed. 443,

that all of the assets of the debtor are subjected to the jurisdiction of the bankruptcy court including rights of redemption. The Court said:

> "It is nevertheless appropriate to point out at this time that whatever right of redemption the

petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75 (n) subjects all of the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that 'the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section'."

THE INTEREST OF A JOINT PURCHASER UNDER A CONTRACT FOR SALE OF LAND IS "PROPERTY" WITHIN THE MEANING OF THE STATUTE

The statute specifically provides that property of the farmer includes

> " . . . all real or personal property or any equity or right in any such property including, among others, contracts for purchase, contracts for deed or conditional sales contracts . . ."
> Sec. 75 (n), Bankruptcy Act.

There are no exceptions to this broad grant of power, and this Court has held that the statute should be liberally construed to accomplish the purposes for which it was enacted.

> Wright v. Union Central Life Ins. Co., 311 U. S. 273; 85 L. Ed. 184; 61 S. Ct. 196.
>
> Kalb v. Feuerstein, supra
>
> John Hancock Mut. L. Ins. Co. v. Bartels, 308 U. S. 180; 84 L. Ed. 176; 60 S. Ct 221.

Despite the sweeping provisions of the statute discussed above, the respondent contended and the Circuit Court of Appeals held that the interest of one of two joint purchasers under a contract for the sale of land cannot be

protected by, or administered under the Act. (R. 36-37). After stating that an estate created by a joint tenancy is susceptible of administration under the general bankruptcy law, the Court said:

> "Thus it is conceivable that the estate of Walter L. Mangus would be the proper subject matter of a general bankruptcy proceeding, absent jurisdiction of the bankruptcy court over the estate of the joint tenant. 11 U. S. C. A. 110 (a). In re Brown, supra. Cf. In re Carpenter, supra. But a proceeding under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a) (r) does not operate to pass title from the bankrupt to the trustee or the bankruptcy court, but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a moratorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings. Wright v. Union Central Life Ins. Co., supra.
>
> This is what Walter L. Mangus seeks to accomplish here. Suppose then that he is permitted to invoke the jurisdiction of the court over his estate and in his attempt to adjust and effect a compromise of his debts what are his rights and what are the rights of Miller? The contract between Walter L. Mangus, Rose L. Mangus, and Miller provides for the payment of the sum of $4,000.00 for a deed to certain property; the deed to be delivered upon the payment of the contract price. In effecting an adjustment and compromise shall Mangus be required to pay the entire purchase price for an estate in common with the seller, which could be no more than a one-half interest, because Miller is now seized (fol. 40) of the interest of Rose L. Mangus over which

the court has no jurisdiction, or shall Miller be required to accept one-half of the unpaid indebtedness for one-half interest in the property, to be held as tenant in common with Mangus? It becomes readily apparent that any final order or judgment which the court could make in the premises would be inconsistent with equity; in contravention of the Constitutional rights of the parties, and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable."

It is provided in

Subsection S (4) of Section 75, 11 U. S. C. A., Sec. 203 s (4), as follows:

". . . The provisions of this title shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition."

The interest of a joint purchaser is "property" within the meaning of the statute. The courts have held that such a purchaser has an equitable interest in the land described in the contract. He has a right upon payment of the purchase price as provided by the contract to demand and receive the legal title, and may obtain specific performance in a court of equity.

1 Tiffany Real Property (3rd Ed.), Sec. 307.

In re Ben Boldt, Jr. Floral Co., (CCA 10), 37 F. (2d) 499.

Smith v. Jones, 21 Utah 270; 60 P. 1104.

A joint interest in such a contract may be conveyed, or may be levied upon and sold at execution.

4 Thompson on Real Property (Perm. Ed.), Secs. 1780-1783.

The Utah statute designating property subject to execution is broad enough to cover a joint interest in a contract of sale.

Section 104-37-9, Revised Statutes of Utah, 1933, provides:

"All goods, chattels, money and other property, both real and personal, and any interest therein, of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits and all other property, both real and personal, and any interest in either real or personal property, and all other property not capable of manual delivery, may be levied on as on writs of attachment. Gold dust and bullion must be returned by the officer as so much money collected at its current value, without exposing the same to sale. Until a levy on personal property, it shall not be affected by the execution. (C. L. 17, Sec. 6920).

See Spalding v. Allred, 23 Utah 354; 64 P. 1100.

Some common law limitations upon the alienability of a joint interest in property and the rights and liabilities of joint owners have been changed by statute.

Sections 45-0-1, and 45-0-2, Revised Statutes of Utah, 1933, provide:

45-0-1:

"A conveyance, release or sale may be made to or by two or more persons acting jointly and one or more, but less than all, of these persons acting either by himself or themselves or with other persons; and a contract may be made between such parties.

45-0-2:

"No contract shall be discharged because after its formation the obligation and the right there-

under become vested in the same person, acting in different capacities as to the right and the obligation. (L. 29, p. 101, Sec. 2)."

Utah has adopted the Uniform Joint Obligations Act, Title 47, Revised Statutes of Utah, 1933, which in part provides:

"3. The amount or value of any consideration received by the obligee from one or more of several obligors, or from one or more of joint or of joint and several obligors, in whole or in partial satisfaction of their obligations shall be credited to the extent of the amount received on the obligation of all co-obligors to whom the obligor or obligors giving the consideration did not stand in the relation of a surety."

The Circuit Court of Appeals, in this case, recognized these characteristics of a joint purchaser's right and held that such a right can be seized by creditors and sold, and is susceptible of administration under the general Bankruptcy law, but for some reason, which is not clear to the writers, cannot be protected under Section 75 of the Bankruptcy Act. (R. 36). There is no provision in the statute which would support such a conclusion. On the contrary, it is provided that the jurisdiction and powers of the court in a proceeding under Section 75 shall be the same as if a voluntary petition for adjudication had been filed and a decree entered.

Section 75 (n) provides in part as follows:

"In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudi-

> cation had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

It is asserted by the Court that after forfeiture of the Rose L. Mangus interest, the vendor became owner of a one-half interest, and in the event of payment of the entire purchase price by Walter L. Mangus, he could obtain only an undivided one-half interest in the land. (R. 36-37) This statement is contrary to the terms of the contract and to the law.

According to the affidavit of respondent (R. 5), the contract provided that upon default, the vendor might, at his election, be released from his obligation to convey, and the buyers' interest in the land would be terminated. It was alleged that the vendor had elected to take advantage of this provision.

Thus upon forfeiture, under the express terms of the contract, the interest of Rose L. Mangus terminated, and the vendor was released from his obligation under the contract to convey to her. He did not step into her shoes and become entitled to join with Walter L. Mangus in demanding and receiving a deed from himself upon payment of the purchase price.

Walter L. Mangus, as a joint purchaser, was entitled to pay the full purchase price and receive a deed, subject to any rights Rose L. Mangus had as to him.

In the case of

Newforth v. Hall, 5 Kan. App. 726; 46 P. 982,

a bond was made for the sale and conveyance of land to two joint purchasers for $1000. One tenant paid $500 and sued for specific performance of the contract to the extent of one-half of the land. The court denied relief say-

ing that the contract provided for the sale of the whole parcel of land for $1,000,

> ". . . and had Sulzman or Hall (the joint purchasers), or either of them paid the full purchase price for this land and interest, as provided in the bond, Newforth (vendor) could have been compelled to specifically perform all of the conditions of the bond."

If, as held by he Circuit Court of Appeals, Rose L. Mangus' right was forfeited, this would not affect the right of Walter L. Mangus to pay the purchase price and to receive a deed. His right was not subject to forfeiture after filing his petition under Section 75 of the Bankruptcy Act, except upon order of the court, made after report of the Conciliation Commissioner.

Subsection o, Section 75, Bankruptcy Act.
Kalb v. Feuerstein, supra.

ROSE L. MANGUS WAS NOT AN INDISPENSABLE PARTY.

Subsection S (4) of Section 75 authorizes

> ". . . partnership, common, entirety, joint community ownerships . . ."

and farming corporations where at least 75 per centum of the stock is owned by actual farmers to join in one petition. However, there is nothing to indicate that co-owners may not file separate petitions. The language, ". . . and any such parties *may* join in one petition," is permissive rather than mandatory.

At common law, all joint tenants were indispensable parties to actions involving their common property.

2 Williston on Contracts, (Rev. Ed.), Secs. 326, 327.
Wythe's Va. Rep., Appendix 401, 402

Utah has, by statute, abolished the rule.

Section 104-3-18, Revised Statutes Utah, provides:

> "All persons holding as tenants in common or as joint tenants, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights involved. In all cases one tenant in common or joint tenant can sue his co-tenant."

See also

Karren v. Rainey, 30 Utah 7; 83 P. 333.

The language of the State statute quoted is broad enough to include a proceeding under Section 75 of the Bankruptcy Act.

The position taken by the respondent that the property described in the contract must be stricken from the schedules because of the failure of an indispensable party to join is inconsistent with his argument that the forfeiture of the interest of Rose L. Mangus was accomplished at a time when the exclusive jurisdiction over Walter L. Mangus and his property was in the Bankruptcy Court. Certainly, if it takes the joint action of both joint purchasers to protect the interest of either under Section 75, it would be impossible to forfeit the interest of one by notice or legal proceeding against one which would be ineffectual as to the other. Under respondent's theory, both joint tenants are indispensable parties for purposes of protecting their rights, but their rights may be forfeited one at a time. No such distinction can be found in applicable statutory or case law.

Any contention that equity could not be done because Rose L. Mangus did not join the proceeding in the first instance disappeared when she joined on February 6, 1941, with the approval of the District Court. (R. 7).

DIFFICULTIES OF ADMINISTERING PROPERTY UNDER SECTION 75 ARE NOT INSURMOUNTABLE.

As indicated above, the Circuit Court of Appeals took the position that upon forfeiture of the interest of Rose L. Mangus, (R. 35, 37), the respondent became owner of her interest in the contract of sale. It reasoned that it was faced with the dilemma of either requiring Walter L. Mangus to pay the full purchase price for a one-half interest in the land, or of requiring Miller to convey a one-half interest to him for one-half of the purchase price. It said it could not do either and concluded that the difficulties were insurmountable. This argument is based on the false premise that Mrs. Mangus' interest remained in existence after forfeiture and passed to respondent. It is apparently assumed that the debtors were joint owners of the land which passed to respondent upon forfeiture rather than mere joint owners of the purchasers' interest in a contract of purchase. According to the affidavit in support of the motion to strike, the contract provided that in event of default by the buyers, the seller would be released from his obligation to convey, all payments theretofore made would be forfeited, the seller could re-enter and take possession of the premises, and the buyers would at once become tenants at will thereof. (R. 5). It is further asserted that the notice required the buyers to make payment of the delinquencies before January 3, 1941, and upon their failure so to do

> ". . . that petitioner had elected that he would thereupon and without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interest, and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatever." (R. 5).

This can mean but one thing. If the notice was effectual as to Rose L. Mangus, it released the vendor from his obligation to convey to her, and it terminated her interest

in the property, namely, her right to obtain title upon payment of the purchase price. If the Rose L. Mangus interest was terminated, the property was incumbered only by the right of Walter L. Mangus to pay the full purchase price and receive the full title. It was no concern of the vendor as to what rights Rose L. Mangus had against Walter L. Mangus, in the event he paid the balance on the contract and received title.

This case then presented for administration the ordinary contract for deed mentioned in Subsection (n) of Section 75, with no more difficulties than the usual case.

If there were extraordinary complications, it would not justify striking the property. Congress gave the debtors valuable rights, which cannot be denied because a court may think that they are difficult to administer.

The judgment of the Circuit Court of Appeals should be reversed and the case remanded with directions to reinstate in the schedules the debtors' interest in the contract of sale and to proceed as provided by Section 75 of the Bankruptcy Act.

Respectfully Submitted.

J. D. SKEEN,
E. J. SKEEN,
Attorneys For Petitioners.

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CHARLES ELMORE CROPLEY
CLERK

No. 74

The Supreme Court of the United States

OCTOBER TERM, 1942

WALTER L. MANGUS AND
ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners' Brief on Motion to Dismiss Writ of Certiorari

J. D. SKEEN,
E. J. SKEEN,
ATTORNEYS FOR PETITIONERS.

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The Supreme Court of the United States

OCTOBER TERM, 1942.

WALTER L. MANGUS AND
ROSE L. MANGUS,
Petitioners,

VS.

MATTHEW A. MILLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners' Brief on Motion to Dismiss Writ of Certiorari

STATEMENT

The respondent has moved to dismiss the writ of certiorari on the ground that the petitioners have ". . . waived their right to appeal from and to have reviewed the judgment and decision of the Circuit Court of Appeals below by having accepted said judgment and decision and having acquiesced therein and accepted the benefits thereof and are now estopped in the premises . . ." The motion is based upon an order of the district court releasing to one of the attorneys for the petitioners, the sum of $130, deposited

by the debtors as rental, and on the acceptance of the money by their attorney. The record discloses that the respondent's motion to strike real estate from the schedules was filed shortly after the commencement of the proceeding. There is nothing before this Court to indicate what occurred in the district court pending the appeal to the Circuit Court of Appeals. We consider the following portion of the record pertinent and have attached certified copies hereto:

IN UNITED STATES DISTRICT COURT FOR DISTRICT OF UTAH

In the Matter of WALTER L. MANGUS, Debtor.	No. 15527 NOTICE

To the Creditors of Walter L. Mangus:

Take notice that the above debtor has deposited with the Court the sum of $130.00, being rental fees under subsection "S" of Section 75 of the Bankruptcy Act.

You are further notified that this matter will be on the calendar on Saturday, November 8, 1941, at 10:00 A. M., Salt Lake City, for hearing on disposition of said rent fees to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed as their interest may appear. Will you please mail proof of claim of any indebtedness to this office on or before the date of the hearing.

Dated this 31st day of October, 1941.

W. B. WILSON, Clerk.
By Helen L. Taylor,
Deputy Clerk.

A copy of the foregoing notice was mailed to respondent on October 31, 1941 as shown by the affidavit of the clerk.

MINUTE ENTRY — NOVEMBER 8, 1941
No. 15527

On this 8th day of November, 1941, debtor appearing by J. D. Skeen, his attorney, and hearing on disposal of rental money continued until November 29, 1941.

MINUTE ENTRY — NOVEMBER 29, 1941
No. 15527

On this 29th day of November, 1941, debtor appearing by J. D. Skeen, his attorney, and good cause appearing, this matter continued pending decision by the Circuit Court of Appeals.

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH, CENTRAL DIVISION.

ORDER VACATING FORMER ORDER AND STRIKING PROPERTY HEREIN

Bankruptcy No. 15527

Matthew A. Miller having filed herein on January 27, 1941 his motion and on February 8, 1941 his supplemental motion to strike the property hereinafter described upon the grounds that the court was and is without jurisdiction thereof, said motions being supported by the affidavit of said Miller and the supplemental affidavit of his attorney, H. F. Thomas, and said motion and supplemental motion having been overruled and denied by order of this Court February 24, 1941, which order was reversed and set aside on appeal by the United States Circuit Court of Appeals, Tenth Circuit, upon the grounds that the interest of said debtors and each of them in said property under and by virtue of the agreement for sale thereof men-

tioned in said affidavits had been duly forfeited and terminated as of January 3, 1941 and that this Court therefore had no jurisdiction thereof.

NOW THEREFORE, on motion of H. P. Thomas, Esq., attorney for said Matthew A. Miller, and in pursuance of said reversal and the mandate of said Circuit Court of Appeals heretofore filed herein, and good cause appearing, it is hereby ordered, adjudged and decreed:

1. That the order of this Court heretofore given and made February 24, 1941 overruling and denying said motion and supplemental motion of Matthew A. Miller to strike said property herein be and is vacated, set aside and held for naught.

2. That said motion and supplemental motion be and are hereby granted and said property stricken from the schedules and proceedings herein, the court having no jurisdiction thereover whatever. Said property is situate in Davis County, Utah, towit:

(Then follows description of land).

Dated this 6th day of March, 1942.

TILLMAN D. JOHNSON, District Judge.

FILED in United States District
Court, District of Utah,
March 6, 1942.

W. B. WILSON, Clerk,
By V. P. Ahlstrom, Deputy.

CERTIFICATE OF CLERK

UNITED STATES OF AMERICA)
) ss.
..... District of Utah)

I, W. B. Wilson, Clerk of the United States District Court in and for the.....District of Utah, do hereby

certify that the annexed and foregoing is a true and full copy of the original

Notice mailed to creditors regarding distribution of rental fee, Affidavit of Mailing of Notice, and Minute Entry of November 8, 1941, and Minute Entry of November 29, 1941, and Order Vacating Former Order and Striking Property Herein, signed by Judge Johnson and filed on March 6, 1942, in Case No. 15527.

In the Matter of
WALTER L. MANGUS and
ROSE L. MANGUS,
Debtors.

now remaining among the records of the said Court in my Office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City, this 5th day of November, A. D., 1942.

W. B. Wilson, Clerk,
By Margaret Johnson,
Deputy Clerk

ARGUMENT

The rule of waiver and estoppel relied upon by respondent is limited in its application to cases in which the conduct of the party seeking a review indicates clearly and unmistakably that he acquiesced in the judgment and intended to waive the right of appeal.

4 C. J. S., Section 211, page 397.
Saunders v. Busch-Everett Co., 71 So. 153; 138 La. 1049.

This Court has held that if a release of errors is not expressed, it can arise only on the principle of estoppel.

Embry v. Palmer, 107 U. S. 3; 27 L. Ed. 346.

It is settled by this Court that if the losing party merely submits to a judgment, it does not constitute a waiver of the right of appeal.

Dakota County v. Glidden, 113 U. S. 222; 28 L. Ed. 981.
O'Hara v. McConnell, 93 U. S. 150; 23 L. Ed. 840.
Erwin v. Lowry, 7 How. 184; 12 L. Ed. 655

In the case of Erwin v. Lowry, supra, the plaintiff was given a writ of possession upon condition that he deposit with the sheriff, for the use of the defendant, the sum of $436.55. The deposit was made, and the sheriff paid the money to the defendant, taking his receipt. The defendant thereafter filed a writ of error, and the plaintiff moved to dismiss. The motion was denied. The Court said:

> "And we take the rule to be, that although a decree in equity is fully executed, at the instance of the successful party, he cannot complain of his own voluntary acts, if he does perform a condition imposed upon him before he can have the fruits of the decree, although the other party derives a benefit from such performance. If it was otherwise, a writ of error in such a case as the present, or an appeal in equity, might be defeated after the writ of error or appeal was sued out, where there was no supersedeas; and here there was none.

> Five years is the time allowed for prosecuting appeals to and writs of error out of this Court, and in many cases decrees and judgments are executed before any step is taken to bring the case here: yet in no instance within our knowledge has an appeal or writ of error been dismissed on the assumption that a release of errors was implied from the fact that money or property had changed hands by force of the judgment or decree. If the judgment is reversed, it is the duty of the in-

ferior court, on the cause being remanded, to restore the parties to their rights."

In the case of

Dakota County v. Glidden, supra,

cited by counsel for the respondent, the Court stated the rule thus:

> "There can be no question that a debtor against whom a judgment for money is recovered may pay that judgment and bring a writ of error to reverse it, and if reversed can recover back his money. And a defendant in an action of ejectment may bring a writ of error and, failing to give a supersedeas bond, may submit to the judgment by giving possession of the land, which he can recover if he reverses the judgment by means of a writ of restitution. In both these cases the defendant has merely submitted to perform the judgment of the court, and has not thereby lost his right to seek a reversal of that judgment by writ of error or appeal."

The explanation of the withdrawal of the rent money is found in the record. The district court, in accordance with the mandate of the Circuit Court of Appeals made an order striking all of the debtors' real estate from the schedules because of lack of jurisdiction. (Page 4, this brief). There being no other property subject to administration under the Bankruptcy Act the court obviously had no jurisdiction over the money deposited as rental, and it accordingly directed that it be returned.

The order dated March 13, 1942, which respondent considers so significant, merely directs the clerk as to the disposition of the rent money. Prior to the decision of the Circuit Court of Appeals the matter of distribution of the rent money had been before the district court two times

and the court continued the hearings awaiting the decision on the appeal. (Page 3, this brief). When the Circuit Court of Appeals held with the respondents, the district court after reciting that it had stricken the real estate in "obedience" to the mandate of the Circuit Court of Appeals, ordered the return of the money to one of the attorneys for the debtors instead of to the debtors personally. If the order had not been made, the clerk would no doubt have mailed the check to the debtors.

In view of the mandate of the Circuit Court of Appeals, and the order of the district court pursuant to the mandate, the attorney had no alternative but to receive the money and to hold it awaiting final disposition of the case in this Court. No supersedeas bond was filed, and the parties to the suit, and the clerk are all obliged to obey the order of the Court striking the property from the schedules until it is set aside or reversed. The clerk of the court could not, in view of the status of the case, act as a stakeholder of the money which belonged to the debtors.

This case falls squarely under the rule discussed above that mere submission to a decree does not constitute a waiver of the right to have it reviewed.

The respondent's argument that the petitioners took the benefits of the judgment appealed from is without merit. The judgment of the Circuit Court of Appeals merely ordered the striking of the property from the schedules. The effect was to deny to the petitioners all relief under the statute, and it exposed them to ouster proceedings. The judgment makes no mention of rent money, and it was not an issue in the Circuit Court of Appeals and cannot be an issue here. The debtors received no benefit from the judgment. The return of the money to them by the clerk was, in effect, a return of a tender, made in compliance with the provisions of

Section 75 (s) of the Bankruptcy Act.

Their financial position was not improved because of the return of the money. As a result of the ruling of the Circuit Court of Appeals, they became, by State law, tenants at will, (the real estate contract having been terminated) and were subject to ouster from the premises by unlawful detainer proceedings. Under the provisions of

Title 104, Chapter 60, Revised Statutes of Utah, 1933

such tenants are liable for treble damages.

There is no element of estoppel present. The petitioners made no misrepresentations; there was no misleading and no change of position by respondents.

Haschenberger v. Dennis, 225 N. W. 25; 118 Neb. 411.

There being no estoppel and no express release of errors, the motion to dismiss must be denied.

Embry v. Palmer, 107 U. S. 3; 27 L. Ed. 346.

The cases cited in respondent's brief on the motion are clearly distinguishable from this case. In each instance, the appellant accepted money or property awarded to him by the decree, and the court properly held, that by accepting the benefits, he was precluded from appealing. The benefits accepted were, in each case, the fruits of the litigation. In the instant case, there were no benefits to petitioners. There was no controversy over the rent money. It was deposited with the clerk to be thereafter distributed as provided by Section 75 (s).

The result of this certiorari proceeding will not determine the ownership of the money. It always belonged to the debtors and will continue to belong to them regardless of the ultimate decision on the question of jurisdiction. If this case is reversed and the real estate is declared sub-

ject to the jurisdiction of the bankruptcy court, the debtors will necessarily deposit with the clerk any rent money which is then due under the order of the district court. There has been and can be no prejudice to the respondent by reason of the withdrawal of the money. As stated by this Court, in the case of

Erwin v. Lowry, supra,

> "If the judgment is reversed, it is the duty of the inferior court, on the cause being remanded to restore the parties to their rights."

It is respectfully submitted that the respondent's motion to dismiss should be denied.

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Petitioners.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1941

No. ~~1138~~ 74

WALTER L. MANGUS and ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER,
RESPONDENT.

Brief of Respondent Opposing Writ of Certiorari.

HADLOND P. THOMAS,
Counsel for Respondent,
Salt Lake City, Utah.

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1941

No. 1138

WALTER L. MANGUS and ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER,
RESPONDENT.

BRIEF OF RESPONDENT OPPOSING WRIT OF CERTIORARI.

I.

STATEMENT.

The Frazier-Lemke Act provides for the joinder of all cotenants in a petition for relief of farmer-debtors:

> "The provisions of this title shall be held to apply also to partnerships, common, entirety, *joint*, community ownerships, . . . *and any such parties may join in one petition.*" §75(s)(4). 11 U. S. C. A. §203 (s)(4).

Congress thus recognized that farm properties like others are often held by *partners;* by husband and wife as tenants by the *entirety* or by the *community;* by some individuals as *tenants in common* and by others as *joint tenants.*

Congress also was thus cognizant of the ancient and well-founded *equity* rule which would apply to the Act (for bankruptcy is an equitable proceedings) that all who have an interest in property to be dealt with (indispensable parties) must be in court; otherwise *jurisdiction* is lacking, —lacking as to *absent* parties because of no jurisdiction over their persons and also lacking as to those *present* because of the impossibility of making a binding and effective decree without affecting the interests of the absent parties.

But Walter and Rose Mangus did not join in one petition as the Act directs. They were purchasing from respondent under an executory contract reserving title in the seller until final payment. By the contract they were *joint-tenant* purchasers (R. 5).

The contract had been made only 23 months but the purchasers were already in default in its $35.00 monthly payments by many months, so on November 30, 1940, respondent, the seller, demanded that they cure their default by January 3, 1941 or the contract would thereupon forthwith terminate (R. 5). They refused to do so. Instead, 6 days before that date, Walter, the husband, filed his petition for relief and listed the property as his (R. 6). But Rose, his wife, and joint tenant under the purchase contract, did not join. The court thus was without jurisdiction under the rule.

January 3, 1941, the forfeiture date, came and went. Respondent moved to strike the property for lack of jurisdiction; Rose not being in court and her interest meanwhile having terminated January 3rd (R. 4). Awakening she filed her "Joinder" and adopted Walter's petition and schedules (R. 6). But her interest had already terminated. Respondent again moved to strike (supplemental motion R. 7-8). The motions were denied (R. 9-10) without opinion. The Circuit Court of Appeals reversed (125 F. (2d) 507. R. 34) and struck the property recognizing the impossibility of jurisdiction to effect relief without both joint tenants and the joint estate being in court. This we will see was the result required by the rule and the only one the Circuit Court of Appeals could logically reach.

II.

THE PETITION OF WALTER L. MANGUS, ONE JOINT TENANT, DID NOT CONFER JURISDICTION OVER THE JOINT ESTATE.

> "The general rule in equity, as to parties, is that all those must be made parties whose interests in the subject-matter of the suit, and the relief sought, are so bound up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, *without which the court cannot proceed.*" (Italics added) 5 Pomeroy's Equity Jurisprudence 4805, §2135.

The rule is well illustrated in partition suits. It is well settled in such cases that all cotenants must be present because a final decree cannot be made without all interests which are to be affected being before the court. Pomeroy supra.

If the rule is not complied with, any decree is *void*. 47 C. J. 366. Void not only as to absent parties because of lack of jurisdiction over them, but also *void* as to parties present for the impossibility of making an effective and binding decree without all interested in the land being in court. C. J. supra.

This court has always recognized the rule. It applies in partition suits. Barney vs. Baltimore City, 6 Wall., (73 U. S.) 280, 18 L. Ed. 825. In junction cases. California vs. Southern Pacific R. Co., 157 U. S. 229, 15 S. Ct. 591, 39 L. Ed. 683.

In Shields vs. Barrow, 17 How. 130, 58 U. S. 159, 15 L. Ed. 158, a suit to set aside a compromise agreement concerning promissory notes, this court held itself powerless to enter a decree and ordered dismissal because only two endorsers were parties; the maker and other endorsers being absent. Such being the scope of the bill and its parties, it was said to be "clear" that a court was powerless to make a decree because the parties were of the third class below mentioned. There are, it was said, three classes of parties (1) formal parties, (2) proper parties whose interests are separable from others so a decree *can* be made without affecting them in their absence and,

(3) "persons who not only have an interest in the controversy but an interest of such a nature that a final decree cannot be made without affecting that interest."

Any decree setting aside the compromise of the notes in that case obviously would have affected the absent maker and endorsers by attempting to restore their liability on the notes. Hence, this court dismissed the bill.

And within the circuit where our case arose (8 Cir. as formerly constituted), the rule was discerned and applied to an equity suit to determine and quiet title to a remainder interest under a trust. But the life tenants were not present. Since ascertainment and determination of the remainder necessarily involved the life tenants, they were indispensable parties without whom, the court held, it could not proceed. Franz vs. Buder (8 Cir.) 11 F. (2d) 854.

The rule is well settled in Utah. The Supreme Court of this state holds that if any owner be omitted in an equity foreclosure proceedings the decree of foreclosure is totally void,—**even as to parties present.** Mickelson vs. Anderson, 81 Utah 444, 19 P. (2d) 1033. Hoyt vs. Upper Marion Ditch Company, 94 Utah 134, 76 P. (2d) 234. Reader vs. District Court, 98 Utah 1, 94 P. (2d) 858.

And the rule has already been recognized as applying to the particular bankruptcy act before us (§75). In re Harris (D. C. Md.), 15 F. Supp. 404. There only one tenant in *common* was in court. A mother-farmer owning one-third of a farm filed her petition for relief. Her cotenant children owning the remaining two-thirds were absent. The petition was dismissed for the nonjoinder. The dismissal, the court said, was,—

> "by reason of the fact that there are *not* before the court parties who are indispensable to the proceeding, to-wit, the children of the debtor who have a *two-thirds* interest in the farm property, possession of which the debtor is seeking to retain under the moratorium provisions of subsection (s). "A proceeding of this kind is essentially an *equit-*

able proceeding, and a court of equity cannot affect the rights of necessary parties unless they have been brought under the jurisdiction of the court." (Italics added).

Referring to Barney vs. Baltimore City and California vs. Southern Pacific R. Co. supra, by this Honorable Court as expounding the rule, the Maryland federal judge observed it required no argument to show the children's interests would be very materially affected by the proceedings,—

> "For example, in consideration of the stay of the mortgage foreclosure on the farm property for a period of three years or such lesser period as the court may determine, and permitting the debtor to remain in possession of her property during such period, she is required to pay into court a reasonable rental for the same."

But the court reminds us the rental during the 3-year stay would arise from the property in which the *children* with their two-thirds have the major interest. And the children,—

> "Having this interest, this court has no right, *without their consent,* to accept any of their portion of it as rental from their mother for the properties, and a fortiori would have no right, *without their consent,* to disburse any portion of their interest in payment of their mother's creditors." (Italics added).

The futility of efforts in equity regarding rights of absent parties is revealed thus:

> "If it be argued that it is the duty of the court to accept only such rental and, therefore, to make only such disbursements to maintain the property, as would represent the proportionate part of the rental on the *debtor's* one-third interest, suffice it to say that *the children would still have to consent to such apportionment.* See Barney v. Baltimore City, supra." (Italics added).

Should the mother alone occupy the farm or she and only some of her cotenant children, rental for the full estate would still have to be paid because, as the judge points out, occupancy could not be partial, and,—

> "Thus, under any possible situation, the interest of some, if not all, of the children is involved."

Furthermore, it was observed, the absent cotenants may have creditors:

> "If so, such creditors must be afforded an opportunity to pass upon a plan for liquidation of what is due them before being compelled to forego(ing) all chance of settlement, for perhaps three years."

In conclusion, the court turns to the Act, §75(s)(4), 11 U. S. C. A. §203(s)(4) providing for a joinder of cotenants quoted at page 1 herein. This, it is said, supports the conclusion reached,—

> "*That is to say, the act seems to recognize that the court has no jurisdiction of tenants in common unless all such tenants are before the court,* providing that, for simplification of the proceedings, *all* may join in *one* petition." (Italics added). In re Harris, supra.

Our case is more compelling. Here is a *joint tenancy* as compared to a tenancy in *common* in the Harris case supra. Were one joint tenant to proceed alone and later die, the court would find itself with no property before it, for by death the petitioning joint tenant would be eliminated; the distinguishing incident of a *joint* tenancy being full title in the survivor instead of its passing to the deceased's heirs. 2 Thompson Real Property 927, §1712.

The result is not dissimilar to a proceedings by one tenant by *entirety*. He may not proceed alone. Not even in general bankruptcy, for the trustee can take no title to such an estate for on the death of one the other takes the whole title. In re Beihl (D. C. Pa.) 197 F. 870. In re Meyer, 81 A. 145, 232 Pa. 89, Ann. Cas. 1912C, 1240, 36 L. R. A. (N. S.) 205. McMullen vs. Zabawski (D. C. Mich.) 283 F. 552. In re Berry (D C. Mich.) 247 F. 700. In re Kearns (C. C. A. N. C.) 8 F. (2d) 437, 6 Am. Bankr. Rep.

(N. S.) 614, certiorari denied Cullom vs. Kearns, 46 S. Ct. 203, 269 U. S. 587, 70 L. Ed. 426. **And where entireties obtain the interest of spouses purchasing under a contract of sale is an estate by entireties. In re Berry, supra.**

In General Bankruptcy proceedings title vests in the trustee. **But not so by §75.** Those *special* bankruptcy proceedings do not operate to pass title to a bankruptcy trustee or court. The status quo is preserved pending composition and extension. Under those special proceedings, as the court below observed,—

> "the debtor will retain title and *emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings.* Wright vs. Union Central Life Ins. Co., supra." Miller vs. Mangus, 125 F. (2d) 507, 511 (R. 39).

Thus Mangus, if he could proceed alone under §75, would continue to own title as a joint tenant and emerge later as such in full joint tenancy with his wife. Retaining his title as joint tenant throughout, no severance would result as might be the case perhaps in *General* Bankruptcy by the passing of title to a trustee. And since the joint tenancy would thus be preserved, the absent joint tenant would be indispensable. No orders regarding control, extending time of payment, reducing interest rates, providing for possession for three years, or fixing rent payable (§75, subs. e, j, k, s-2) could be possible without encountering the rights and interests of the absent joint tenant.

Benitez vs. Bank of Nova Scotia (1 Cir.) 125 F. (2d) 523 is identical in principle. The wife of a member of a Puerto Rican "Comunidad" (partnership) filed without her husband, the other member. She thought this would subject the partnership property to the bankruptcy jurisdiction. But the Circuit Court of Appeals held that the filing of a petition by one partner did not carry into bankruptcy the partnership estate but that as provided by the Act all such persons (the partners) must join.

Under the rule, the filing by Walter, one joint tenant, did not carry into bankruptcy the joint estate.

III.

THE SUBSEQUENT JOINDER BY ROSE L. MANGUS, THE OTHER JOINT TENANT, AFTER FORFEITURE OCCURRED DID NOT SUPPLY JURISDICTION.

The forfeiture of the contract was appointed for January 3, 1941 by respondent's demand for performance by that date (R. 5, 9). The petition by the one joint tenant, Walter, as we have seen did not effect jurisdiction over the joint estate. Since it did not, that estate continued free from the proceedings. Being free, respondent's notice and demand and the impending forfeiture of that estate for nonperformance by January 3rd continued to attach in full vigor. And so on January 3rd the forfeiture thus occurred as forfeitures will in Utah where nonperformance results after a purchaser is warned to perform on pain of forfeiture set for a date certain if he fail. (R. 37). Federal Land Bank vs. Sorenson (Utah) 121 P. (2d) 398. Christy vs. Guild (Utah) 121 P. (2d) 401. Leone vs. Zuniga, 84 Utah 417, 34 P. (2d) 699, 94 A. L. R. 1232. Munson vs. Apartment and Hotel Investment Co., 62 Utah 13, 218 P. 109. Malmstrom vs. Second East Apartment Co., 74 Utah 206, 278 P. 811. Tullis vs. Pratt, 86 Utah 244, 42 P. (2d) 222. Columbia Airways vs. Stevens, 80 Utah 215, 14 P. (2d) 984. See also this case below, 125 F. (2d) 507, 510. (R. 37).

And Rose Mangus did not join the proceedings until after the forfeiture,—February 6, 1941. This was too late. The forfeiture had already occurred over a month before. The joint tenants had had fair warning. They had failed to cure their default. They had failed to perform. One of them alone had filed. But that filing failed to effect jurisdiction over the joint estate. Thus, of course, the appointed forfeiture was not arrested. When it occurred on January 3rd the joint tenants no longer had any interest in the property and none existed to be taken into bankruptcy by them.

The filing by one joint tenant before forfeiture was insufficient to confer, and the joinder by the other after forfeiture was insufficient to supply bankruptcy jurisdiction over the property. Since their interest had expired

before both were in court, the joint tenants could not confer jurisdiction. Wright vs. Union Central Life Ins. Co., 58 S. Ct. 1025, 304 U. S. 502. Union Bank vs. Byerly, 60 S. Ct. 773, 310 U. S. 1. It has already been held in the circuit below that where the debtor's interest in such a contract has been forfeited under Utah law, he cannot list the property and thereby confer jurisdiction over it. Bastian vs. Erickson (10 Cir.) 114 F. (2d) 338.

IV.

PRACTICAL ASPECTS.

If one joint tenant may proceed alone (and §75-s-4 forbids) what will result? Suppose so cast the proceedings continue into subsection "s" as they usually do. What then

1. Upon appraisal what shall be appraised, the entire estate or one-half? Remember, the absent joint tenant (before forfeiture) has his interest, and his rights lie athwart any effort of the court to deal with the property.

2. Upon fixing rent what shall be the basis, the whole estate and its full rental value, or a one-half interest and half the rental value?

3. The Circuit Court below observed rightfully that Rose's interest had of course reverted to respondent, seller, by the forfeiture. If Walter may proceed alone, are he and respondent then cotenants? If so, can any rent be allowed? Cotenants may not ordinarily demand rent from each other.

4. On final payment at the end of the three-year stay when Walter alone emerges from the proceedings, what must he pay respondent to free his interest? Only one-half the appraised value? If so, the court has made a new contract for the parties. Respondent did not agree to sell for half, but for the full amount.

5. What, if Walter's petition alone were good, would be his interest over which bankruptcy has jurisdiction? Is it one-half? *Remember Rose is now forfeited out.* If it be one-half and Walter be entitled to that much by conveyance, the court has again made a new contract. Respondent agreed to sell and convey not one-half but the whole estate. To compel him to convey only one-half is to make a new contract for the parties.

6. Suppose the proceedings did not continue but stop-

ped short of subsection (s) (the 3-year stay). Walter thus out of bankruptcy and perhaps in funds would have to pay how much to clear his interest? One-half the balance for a deed of one-half, or the entire balance for a deed of one-half? Remember the full estate is not deliverable for Rose has been forfeited out. Respondent did not agree to sell half for $2000.00, but the entire estate for $4000.00. Nor did Walter agree to pay $4000.00 for half.

These are some of the questions which result if a petition by one cotenant is sufficient. If Rose had timely joined, the result would not be in doubt. Both, and the whole estate, would then have been before the court and subject to its jurisdiction and orders. The result would have been clear. But only confusion can result where one alone petitions.

That confusion simply illustrates the occasion for the rule that equity is forced to deny its jurisdiction unless all who may be affected by its processes are before it. It was upon that consideration that Congress directed all cotenants to join in the proceedings. It was for that reason that the Maryland federal judge held he was without jurisdiction. In re Harris supra. It was for similar reasons the First Circuit Court of Appeals was correct in denying jurisdiction over a partnership estate where only one partner had filed. Benitez vs. Bank of N. S. supra. And it was for the same reason that the Circuit Court below herein held no jurisdiction was conferred over the joint estate by petition of Walter alone.

V.

CONCLUSION.

Why petitioners did not both join in the original petition for relief we are not told. If it was in hopes to gain two successive 3-year stays against respondent—one by the husband and another afterward by the wife and thus withhold respondent's property six years—petitioners grossly miscalculated their rights. While this may have been their ambition, Congress certainly intended no such unconscionable mischief. One stay, yes; but several, never.

Yet no end of successive stays are possible if less than all may proceed. Each in turn may petition as soon and so often as a prior stay is about to expire. And the number of stays possible will depend in each case only on the number of cotenants. And each deliberately may create additional cotenancies and enlarge the opportunity for additional stays by the simple and legal device of conveying away fractional interests in his own partial ownership. Thus a continuing and interminable stay could be obtained. Such mischief cannot be attributed to congressional purpose.

Respondent submits:

1. The petition by Walter L. Mangus alone did not confer jurisdiction over the joint estate.

2. The subsequent joinder by Rose L. Mangus after forfeiture did not add to the lacking jurisdiction.

The judgment of the Circuit Court of Appeals below striking out and dismissing the property from the proceedings was clearly right. Certiorari should be denied.

Respectfully submitted,

HADLOND P. THOMAS,
Counsel for Respondent,
Salt Lake City, Utah.

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.

April 29, 1942.

Office - Supreme Court, U. S.
FILED
OCT 21 1942
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1942

No. 74

WALTER L. MANGUS and ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER,
RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit

Respondent's Motion To Dismiss Certiorari

Respondent's Brief on Merits

HADLOND P. THOMAS,
Counsel for Respondent,
Salt Lake City, Utah.

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.

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I.

STATEMENT ON MOTION TO DISMISS.

Petitioners were purchasing Utah real property from respondent by executory contract (R. 4).

They had long defaulted in the monthly payments reserved (R. 5).

The contract declared time was of its essence and

that default should release the seller and terminate the contract. So on November 30, 1940 respondent gave written notice the default must be cured by January 3, 1941 or the contract would then terminate (R. 5). Such results by local Utah law. (Opinion below R. 31, 34).

Instead of complying, 6 days before the appointed forfeiture one purchaser alone, Walter L. Mangus, filed a farmer-debtor petition for relief under §75 of the Bankruptcy Act. 11 U. S. C. A. §203.

This, respondent steadfastly contended, was insufficient to give the bankruptcy court jurisdiction in the circumstances, both cotenant-purchasers being requisite, and each indispensable, to that equitable proceedings.

The Circuit Court of Appeals agreed and the property was ordered stricken from the proceedings (R. 37, 38).

Petitioners no less steadfastly contended jurisdiction had thus been conferred. In fact, although the forfeiture date arrived and passed the absent cotenant-purchaser, Rose I. Mangus, nevertheless joined the proceedings 34 days afterward on February 6, 1941 (R. 6).

The dispute was over jurisdiction. Respondent claimed none had been conferred before the forfeiture occurred; petitioners that it had.

Asserting jurisdiction existed, petitioners proceeded accordingly. Thus pending decision by the Circuit Court of Appeals they paid into the bankruptcy court a rental payment looking to a 3-year stay as required by the Act. § 75 (s) (2). 11 U. S. C. A. § 203 (s) (2).

But on January 12, 1942 the Circuit Court of Appeals ruled no jurisdiction had been conferred and ordered the property stricken (R. 31, 34).

Accepting the decision against them and acquiescing therein, the debtors proceeded to partake of its benefits: 32 days afterward (and after mandate had issued, R. 38,

and the trial court had ordered the property stricken as directed) they on March 13, 1942 procured an order of the district court in bankruptcy refunding to them the rent previously deposited and withdrew and receipted for the same. By doing so they in law accepted the judgment and decision of the Circuit Court of Appeals and waived their right and were estopped to appeal therefrom.

Accordingly petitioner moves to dismiss the writ of certiorari. The motion follows.

II.

MOTION TO DISMISS WRIT OF CERTIORARI.

And now comes respondent and moves the Honorable Supreme Court of the United States to dismiss the writ of certiorari in this cause upon the grounds that petitioners have duly waived their right to appeal from and to have reviewed the judgment and decision of the Circuit Court of Appeals below by having accepted said judgment and decision and having acquiesced therein and accepted the benefits thereof and are now estopped in the premises in that,—

(1) Said judgment of the Circuit Court of Appeals was made January 12, 1942 adjudging the bankruptcy court to be without jurisdiction over the property herein (R. 31, 38).

(2) Thereafter, March 13, 1942, petitioners procured an order of the United States District Court, District of Utah in bankruptcy herein (as hereinbelow set forth) releasing and refunding to them the rent money, $130.00, deposited by them with said court as rental for possession of said property.

(3) On said March 13, 1942 petitioners then withdrew and accepted said rent and receipted for same as hereinbelow shown.

That a copy of (1) said order and (2) said receipt duly certified by the clerk of said district court is filed and exhibited herewith, (being attached to the copy of this motion and brief on which proof of service on petitioners' counsel appears) is hereby referred to and made a part hereof and is as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH

In the Matter of
WALTER L. MANGUS and
ROSE L. MANGUS
Debtors

No. 15527
ORDER

The United States Circuit Court of Appeals for the Tenth Circuit having directed that the real estate scheduled in the above entitled matter be stricken from the schedules for the reason that this court is without jurisdiction as to said real estate and this court in obedience to the mandate of the Circuit Court of Appeals having made and entered an order striking said real estate; upon motion of J. D. Skeen, attorney for the debtor,

IT IS ORDERED that the Clerk of this Court pay to the said J. D. Skeen as such attorneys, the sum of $130.00 paid to the Clerk of the Court as rental by said debtors.

Dated this 13th day of March, 1942.

TILLMAN D. JOHNSON,
Judge.

FILED in United States District Court, District of Utah Mar. 13, 1942, W. B. Wilson, Clerk, by V. P. Ahlstrom, Deputy

RECEIVED check No. 494 for $130.00 as referred to in this Order. March 14, 1942.

J. D. SKEEN,
Attorney

UNITED STATES OF AMERICA
DISTRICT OF UTAH } ss

I, W. B. Wilson, Clerk of the United States District Court in and for the District of Utah, do hereby certify that the annexed and foregoing is a true and full copy of the original

ORDER signed by Judge Tillman D. Johnson and filed on March 13, 1942, together with notation thereon showing receipt of said money,

in Case No. 15527

In the Matter of
WALTER L. MANGUS and
ROSE L. MANGUS
Debtors

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City this 1st day of October, A. D. 1942.

By MARGARET JOHNSON,
Deputy Clerk.

(Seal, U. S. District Court,
District of Utah)

Respondent respectfully requests that the court assign said motion for oral argument to be heard when this cause comes on upon the calendar of the court.

Dated October 12, 1942.

HADLOND P. THOMAS,
Counsel for Respondent.

UNITED STATES OF AMERICA
DISTRICT OF UTAH } ss

Hadlond P. Thomas, being first duly sworn, on oath deposes and says that he is counsel for

respondent and has examined the files of said district court herein and that the copy of said order and receipt duly certified by the clerk of said court filed herewith and above referred to is a true copy of the order and receipt on file in said district court in this cause. That this motion is made in good faith and not for delay and in his opinion is well taken.

HADLOND P. THOMAS,

Subscribed and sworn to before me this 12th day of October, 1942.

EDNA ODENWALDER
Notary Public, residing at
Salt Lake City, Utah.

III.

ARGUMENT ON MOTION TO DISMISS.

A.

The Motion Must be Granted.

This dispute has ever been a jurisdictional one.

Respondent contends a debtor proceedings by one joint-tenant purchaser named in an executory agreement to sell does not confer jurisdiction of the property in the agreement and that consequently an appointed forfeiture for default prescribed by the agreement is not arrested by the proceedings.

Petitioners contend the contrary. They assert the forfeiture is thus arrested and that the absent purchaser may therefore join the proceedings after the appointed forfeiture date as Rose L. Mangus did.

The two contentions have always been at war. The Circuit Court of Appeals below ruled against petitioners. It held no jurisdiction of the property was thus conferred and hence the forfeiture was not arrested but was effected and the later joinder by Rose worked nothing. It ordered the property stricken.

But because they contended throughout that jurisdiction had been effected, the debtors were bound to consistently proceed accordingly. And so proceeding they quite properly deposited in the registry of the trial court the $130.00 rental required and fixed by the Act and the bankruptcy court.

The Act provides:

> "During such three years the debtor shall be permitted to retain possession . . . provided he pays a reasonable rental . . . Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear."

Bankruptcy Act, §75 (s) (2). 11 U. S. C. A. §203 (s) (2).

It is fundamental that:

"Parties to suits must act consistently."

Chase vs. Driver (8 Cir.) 92 F. 780.

But consistency the debtors abandoned when the Circuit Court of Appeals decided against them. By that decision, no jurisdiction resulting, the debtors were rightfully entitled to the return of their rent deposit. Having no jurisdiction, the trial court was without authority to require the deposit in the first place. Manifestly, if the debtors accepted the decision they must suffer its burdens. But in such case they were also entitled to its benefit. That benefit was the resulting right to the return of the rent deposited by them. But if they accepted the benefits of the decision, they could not reject and appeal from its burdens. Yet that is precisely what they attempted. They took back the rent. And they later appealed. Their retaking waived and defeated their right of appeal.

It is fundamental that a party may waive his right to appeal:

> "His right may be waived, however, by his own acts or conduct, if such acts or conduct are voluntary and intentional . . . this may be done both expressly and impliedly, and it has been broadly asserted that any act on the part of a party by which he impliedly recognizes the validity of the judgment against him operates as a waiver of his right to appeal therefrom or to bring error to reverse it." 2 Am. Jur., Appeal and Error, §201.

He may do so by express release of errors after judgment. 4 C. J. S., Appeal and Error, §210-b. Or even in advance of trial and judgment. Id. §210-a. But his waiver need not be express. It will be implied by his inconsistent acts or conduct which will work an estoppel. Id. §211.

One who voluntarily acquiesces in, ratifies or recognizes the validity of a judgment against him, or takes a

position which is inconsistent with the right of appeal impliedly waives his right to a review. He is estopped. 4 C. J. S., Appeal and Error, §212. 2 Am. Jur., Appeal and Error, §206.

Thus:

> "It is a well settled general rule, which in some states exists by statute or rule of court, that, where a party, knowing the facts, voluntarily accepts the benefits, or a substantial part thereof, accruing to him under a judgment, order, or decree, such acceptance operates as a waiver or release of errors, and estops him from afterward maintaining an appeal or writ of error, to review the judgment, order, or decree or deny the authority which granted it." 4 C. J. S., Appeal and Error, §215.
>
> See also 2 Am. Jur., Appeal and Error, §214.

The acceptance of money deposited in court is usually one of the surest means of becoming estopped. 4 C. J. S., Appeal and Error, §216-b.

This court recognized the rule in United States vs. Benedict, 261 U. S. 294, 43 S. Ct. 357. There, New York City was decreed no compensation for lands requisitioned by the Government under the Leaver Act. The Circuit Court of Appeals (2 Cir.) ordered a reversal and new trial unless the city accepted $162,000.00 for its claim to the property. It accepted. It later sought review here claiming $560,000.00. Dismissal resulted. The court said:

> "It cannot hold what it accepted and demand more. The final judgment of the Circuit Court of Appeals must be treated as though entered upon its express consent and its writ of error is accordingly dismissed."

The rule is followed in the circuit courts of appeal. In re Minot Company (8 Cir.) 298 F. 853. There in a bankruptcy the United States claimed a $12,000.00 income tax lien. The bankrupt denied any tax was due. The Government attacked the referee's jurisdiction to determine the controversy. He assumed jurisdiction and found $2000.00 due. The trustee paid this sum to the collector and U. S.

attorney. They received and accepted it for the Government. The Government later appealed. The appellate court held the Government had waived its appeal by accepting the money:

> "The rule is well settled that one cannot accept a benefit under a judgment and then appeal from it."
>
> " . . . Petitioner by receiving and retaining that which the bankruptcy court determined was the full amount of the tax thereby waived its right to have the order of April 20, 1922 revised."

The following are to the same effect. Oriole Phonograph Co. vs. Kansas City Co. (8 Cir.) 34 F. (2d) 400. Ten per cent decreed on account was accepted before appeal. Albright vs. Oyster (8 Cir.) 60 F. 644. A deed was accepted under a decree and appeal taken the next day. Spencer vs. Babylon Co. (2 Cir.) 250 F. 24. County treasurer accepted $13,000.00 taxes awarded in railroad receivership and four days later appealed. U. S. vs. Flower (8 Cir.) 108 F. (2d) 298. River boundary decree accepted in part and later appealed. Credit Bureau vs. Petrasich (9 Cir.) 118 F. (2d) 470. Federal court judgment (1) awarded credit bureau $301.15 and (2) enjoined it from collecting on state judgment. It accepted the money and appealed the injunction.

Kaiser vs. Standard Oil Company (5 Cir.) 89 F. (2d) 58 was a libel for wages, maintenance and damages sustained on board ship. Decree was for $250.00 only. Libellant received the money and appealed. He was held to have waived:

> "Accepting the fruits of a judgment and thereafter appealing therefrom are totally inconsistent positions and the election to pursue one course is deemed an abandonment of the other . . . libellant having accepted the benefits . . . of the decree he is estopped to now question it . . . he will not be heard to both approbate and reprobate as to the same matter."

Counsel here obtained the order of withdrawal and received the rent deposit. Acceptance by the attorney of record in compliance with a judgment is acceptance by the client and works a waiver. 4 C. J. S., Appeal and Error, §216-e (2).

The cases are legion. Those above are but few of the many federal ones. Resort to the state court decisions upon the subject would interminably extend this brief. No rule is better settled. As to decisions by the state courts, we need only say petitioners must have known the rule for it is well established in the courts of Utah. Ottenheimer vs. Mountain Supply Co., 56 Utah 190, 188 P. 1117. Cornia vs. Cornia, 80 Utah 486, 15 P. (2d) 631.

The rule applies in criminal cases. The voluntary acceptance of a suspended sentence, probation or parole waives the defendant's right to appeal. Brooks vs. Arizona (Ariz.) 78 P. (2d) 498, 117 A. L. R. 925. See also note 117 A. L. R. 929.

Suppose this court reversed and directed the property be reinstated below. What then?

Where is the rent money the Act demands for respondent's benefit in return for possession now already withheld two years?

May possession have been withheld and that withholding continue, rent-free, now the rent is gone?

Must the deposit be kept good only when the debtor will be suited?

May debtors experiment with courts and refuse to abide the law while speculating?

May they take down that for which they are fighting to deposit while engaged in fighting for that right?

Parties to suits must act consistently. Chase vs. Driver supra. Before this Honorable Court, the highest in the land, consistency no less than of the highest degree must be shown. The writ of certiorari must be dismissed.

B.

Authority for the Motion.

The record here comes directly from the Circuit Court of Appeals. But the rent was deposited in the district court below. Its withdrawal was ordered in the district court while the record resided in the appellate court from whence it afterward arrived here. Thus the order of withdrawal and receipt for the rent are not shown by this record. They are contained only in the district court.

Consequently, a showing dehors the record on appeal became necessary for the purpose of the motion to dismiss. This is often the case in order to bring matters to attention of the court.

Affidavits and other evidence dehors the record are always competent to establish the fact of waiver of right to appeal. 4 C.J.S., Appeal and Error, §211. 2 Am. Jur., Appeal and Error, §205. Respondent therefore exhibited as part of his motion a true copy of the order and receipt refunding the rent both certified by the district court. Also the affidavit thereto of his counsel supporting the facts in the motion, 5-7 supra. Such procedure has been approved by this Honorable Court. Elwell vs. Fosdick, 134 U. S. 500, 10 S. Ct. 598, 33 L. Ed. 998. There in this court respondent moved dismissal because a trustee of a railroad bond issue had executed a release of errors after judgment below. The release was filed in the district court. It was not contained in the record on appeal. So a certified copy, as here, was exhibited as part of the motion. This court held on the authority of Dakota County vs. Gledden, 113 U. S. 222, 5 S. Ct. 428, that the release was thus properly before it:

> "This court is compelled as all courts are to receive evidence dehors the record affecting their proceedings in a case before them on error or appeal."

For example:

"The death of one of the parties . . . the transfer of the interest of one of the parties by assignment or by a judicial proceedings in another court as in bankruptcy or otherwise is brought to the attention of the court by evidence outside of the record, and acted on. A release of errors may be filed as a bar. . . "

"The result is that the appeal must be dismissed and it is so ordered."

IV.

ARGUMENT ON THE MERITS.

A.

The Petition of Walter L. Mangus, One Joint-Tenant Purchaser, Did Not Confer Jurisdiction Over the Joint Estate.

"We start with the weighty opinions of two circuit courts of appeal." Kirschbaum vs. Walling, 62 S. Ct. 1116, 1120.

With this observation by MR. JUSTICE FRANKFURTER this Court recently commenced inquiry into the gravely important law question whether coverage of the Fair Labor Standards Act (wages and hours) extended to local maintenance employees of loft buildings leased to tenants in production of goods for commerce.

That opening reference is significant. To characterize the opinions of the circuit courts of appeal as weighty is quite proper. The circuit courts of appeal justly command respect. Their opinions do carry great weight. They are, of course, most persuasive.

Here, however, we start with the weighty opinions of three of the circuit courts of appeal. And of one district court as well. Three circuit courts of appeal and one district court have now ruled that all cotenants must be joined as parties to a debtor proceedings to effect jurisdiction over joint property. If less than all are joined, no jurisdiction will result.

None has held to the contrary.

The reason for the rule is that a court of bankruptcy is a court of equity. Prudence Corporation vs. Geist, 62 S. Ct. 978. And the rule in equity as to parties is that all must be parties whose interests in the subject matter and relief sought are so bound up with others that their presence is so necessary that a court cannot administer relief without them. 5 Pomeroy's Equity Jurisdiction 4805, §2135. Without them the court is bereft of jurisdiction. Its orders and decrees are totally void. Void not only as to the absent persons, but void also as to parties

present as well, because of the utter impossibility of arriving at effective orders and decrees without all owners in interest being in court. 47 Corpus Juris 366.

Specifically, the three decisions of the circuit courts of appeal in their order are:

Miller vs. Mangus (this case below) 10 Cir., 125 F. (2d) 507.
Benitez vs. Bank of N. S. (1 Cir.) 125 F. (2d) 523.
Buss vs. Prudential Ins. Co. (8 Cir.) 126 F. (2d) 960.

The district court decision is:

In re Harris (D. C. Md.) 15 F. Supp. 404.

In re Harris was the first case. A farmer-mother owning one-third petitioned. Her children owning two thirds (her tenants in common) did not join. The court held it had no jurisdiction over the property and dismissed because all cotenants were not before it.

Miller vs. Mangus (the case at bar) 10 Cir., came next. Since only one joint-tenant purchaser was in court before the appointed forfeiture, it was held no jurisdiction had resulted and that the forfeiture was effective before the other joint purchaser joined up attempting to supply the wanting jurisdiction.

Benitez vs. Bank of N. S. (1 Cir.) was the third case. It was decided January 30, 1942, 18 days after the case at bar. It is identical in principle. The wife, one member of a Puerto Rico "comunidad" (partnership) petitioned without her husband, the other member. The Circuit Court of Appeals held this was insufficient to confer jurisdiction over the common property of the partnership.

Buss vs. Prudential Ins. Co. (8 Cir.) was the fourth case. It had not appeared when respondent's brief opposing certiorari was printed. Consequently it was not mentioned there. The case is strikingly in point. A farmer-husband and wife were tenants in common. The husband alone had filed a prior debtor proceedings. It had been dismissed

with his consent. Next year the two instituted and joined in new proceedings. The creditor claimed the prior proceedings was res judicata and moved dismissal. But it was held that since both cotenants had not been joined in the first cause, no jurisdiction of the common property had been acquired therein, that those entire proceedings were therefore void not only as to the wife who was not a party but also as to the husband who was, and hence that those proceedings were a nullity and not res judicata. Significantly the court based its decision upon the cases cited in the opinion of the Circuit Court of Appeals herein including In re Harris supra. It said:

> "In the case of In re Harris, D. C. Md., 15 F. Supp. 404, the court considered the question and dismissed a proceeding brought by only one of several tenants in common because of the absence of the cotenants." Buss vs. Prudential Ins. Co., 126 F. (2d) 960, 967.

And upon the question it then followed the decision herein below saying:

> "Compare Miller v. Mangus, 10 Cir., 125 F. 2d 507, a case involving joint tenants, not tenants in common." Id.

Concluding upon the point that court said:

> "The court did not have jurisdiction over the subject matter in the former proceeding and the agreement filed and the orders entered therein were void." Id.

These three decisions by the circuit courts of appeal are weighty. Kirschbaum vs. Walling supra. They are unopposed. The district court decision, In re Harris, supra adds further weight. It is respectfully submitted that they soundly represent the law and should be altogether persuasive upon this Honorable Court.

B.

The Utah Code of Civil Procedure Does Not Apply.

Petitioners refer to §104-3-18 Revised Statutes of Utah (Brief for Petitioners, p. 14). This they suggest applies. That section they claim is authority for one cotenant instituting this proceedings alone. They so contended below. The court decided not.

But the section noted is simply a part of the Utah Code of Civil Procedure. That Code governs the procedure in the Utah courts. It cannot apply in the federal courts. The latter have their own rules of procedure. Federal Rules of Civil Procedure, following 28 U. S. C. A. §723c. And those rules apply in bankruptcy. General Orders in Bankruptcy, Order 37, following 11 U. S. C. A. §53. And the applicable rule therefore is not the section of the Utah Code of Civil Procedure cited, but Rule 19 (a) of the Federal Rules of Civil Procedure which prescribes that,—

> "Persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants." Rule 19 (a).

C.

Respondent's Earlier Brief Herein.

As a part of this brief respondent now refers to and makes a part hereof his earlier brief as fully as if its contents were again set forth herein. Instead of here reprinting its text, which would serve no possible good, we respectfully request the court to refer to that brief for a particular discussion of the merits. It is,—

Brief of Respondent Opposing Writ of Certiorari

October Term 1941

No. 1138

V.

CONCLUSION.

1. The Circuit Court of Appeals below ruled that the district court had acquired no jurisdiction of the property by one joint-tenant purchaser proceeding alone and that the appointed forfeiture of the contract therefore was effected before the other purchaser joined in attempting to supply the lacking jurisdiction. Petitioners then procured the district court's order refunding the rent they had deposited. They withdrew and received that rent and later they appealed. But by procuring the refund of the rent they had already accepted the benefits of that judgment and in law had waived their right to appeal therefrom and to have it reviewed. They were estopped.

What responsibility to this court or the courts below a litigant or counsel must be held to have assumed for such untoward and inconsistent conduct we do not undertake to say. That is properly for the court. Yet petitioners' purposeful withholding of respondent's property for another season by this appeal, notwithstanding their prior withdrawal of the rent deposited, should not go unnoticed.

Respondent's motion, however, must be granted and the writ of certiorari be dismissed.

2. But were the right to review not lost, still the judgment below was right. Bankruptcy is equity. And in equity no party whose interests in the subject matter are apt to be effected by an order or decree may be omitted. If he is, no jurisdiction results. A decree in the circumstances is totally void—void not only as to the parties absent, but void also as to those present for utter impossibility of rendering an effective decree.

No solution evolves in the fact that one joint tenant's interest is susceptible of administration in general bankruptcy for there the filing constitutes a severance of the joint estate and title to the bankrupt's share at once

vests in the trustee and is sold for debts. By this special proceedings under §75, however, title does not vest in a trustee. The debtor is not divested. He retains title. He retains possession. The status quo is designed to endure, the debtor deposits rent fixed by the court, the creditor is held at bay for three years, and thereupon the debtor emerges from the proceedings seized with the property on payment of its appraised value. (Decision below R. 36 and cases cited).

All efforts to fix rent, appraise and determine interests, award and enforce possession, adjudge redemption values, and otherwise administer the act for the social betterment with some parties in and others out of court, must inevitably result in hopeless chaos. Chaos serves no social end. State Tax Commission vs. Aldrich, 62 S. Ct. 1008, (MR. JUSTICE JACKSON, 1019).

3. The Utah Code of Civil Procedure does not apply. State legislatures do not prescribe the rules of procedure in federal courts. The Federal Rules of Civil Procedure apply. They declare that persons having a joint interest shall be joined. Rule 19 (a).

4. The writ of certiorari must be dismissed. The judgment of the Circuit Court of Appeals must be affirmed.

Respectfully submitted,

HADLOND P. THOMAS,
Counsel for Respondent,

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.

October 12, 1942.

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Supreme Court of the United States

OCTOBER TERM, 1942

No. 74

WALTER L. MANGUS and ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER,
RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit

RESPONDENT'S PETITION FOR REHEARING

RESPONDENT'S BRIEF ON REHEARING

HADLOND P. THOMAS,
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Salt Lake City, Utah.

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.

Supreme Court of the United States

October Term, 1942

No. 74

WALTER L. MANGUS and ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING

Comes now respondent and prays this Honorable Court to reconsider, re-examine and grant a rehearing of this cause decided by its opinion December 7, 1942, and to revoke and recall its decision and opinion and as grounds for such rehearing alleges that said decision and opinion is contrary to and against law.

WHEREFORE, respondent respectfully prays that said judgment, decision and opinion be vacated and recalled and this cause reconsidered and re-examined and a rehearing be granted.

H. P. THOMAS,
Counsel for Respondent

H. P. Thomas, one of counsel, hereby certifies that said petition is in his opinion well founded in law and should be granted and is made in good faith and not for delay.

H. P. THOMAS

I.

THE COURT HAS MISTAKEN THE POINT AT ISSUE ON THE MERITS.

The court's opinion commences:

> "The question is *whether the interest of one of two joint tenants* of a land purchase contract *can be administered in farmer-debtor proceedings* under §75 of the Bankruptcy Act as amended, 11 U. S. C. §203, although subsequent to the filing of his petition the interest of his co-tenant had been forfeited by default in payment of installments of the purchase price."

And after observing that §75(n) subjects all property interests of a debtor to the bankruptcy court's jurisdiction, says:

> "We see no reason to doubt that, under these provisions and others presently to be noted, the bankruptcy court had jurisdiction in a §75 proceeding over the husband's interest as joint tenant in the contract for the purchase of the land." (p. 3.)

As a result, it is then stated:

> "Accordingly we conclude that the *husband's interest* in the property held by him as joint tenant with his wife is *property* within the meaning of §75(n), and that the court acquired jurisdiction over that interest upon the filing of his petition." (p. 4.)

This language shows decisively that the question presented in the court's mind was simply: Whether the interest of one cotenant was such property as could be administered in §75. In other words—whether that interest could be subjected to the jurisdiction of a bankruptcy court in a §75 proceeding.

The answer is that it could. We have never contended otherwise. We agree to the proposition of *sub-*

stantive law that the interest of one cotenant can be the proper subject of such jurisdiction. But that is not the problem. The problem is *not* whether one cotenant's interest may be subjected to bankruptcy jurisdiction under §75.

The problem *is*: Whether the court in a §75 proceeding acquires jurisdiction of that interest without all cotenants (and their interests) being in court. The answer is that it does *not*.

The substantive law question whether under §75 one cotenant's interest can be subjected, and the adjective law question whether it *is* subjected to the court's jurisdiction when all such interests are not in court, are totally different questions. Indeed, they have no relation.

We have never contended that one cotenant's interest could not be subjected to a §75 proceeding. *Yet that is all the opinion now decides.* It is therefore without value in this cause.

The actual point is a procedural one, to-wit: Does a court in an equity proceeding (bankruptcy is equitable) acquire jurisdiction to deal with property if less than all cotenants are before it? This point has *escaped* the court. But the court of appeals observed it and decided that all cotenants' interests are necessary to confer jurisdiction to deal with the property because equity is at a total loss of jurisdiction if interests apt to be encountered or affected by its orders and decrees are absent. Barney vs. Baltimore, 6 Wall. (63 U. S.) 280. Shields vs. Barrow, 15 L. Ed. 158. And in every instance the courts had so decided specifically under §75 itself. In re Harris (D. C. Md.), 15 F. Supp. 404. Benitez vs. Bank (1 Cir.) 125 F. (2d) 523. Buss vs. Prudential Ins. Co. (8 Cir.) 126 F. (2d) 960. None have decided otherwise.

When all cotenants are before the court—in one or even perhaps in separate proceedings instituted together in the *same court*—jurisdiction is complete because the court can make its orders effective as to all cotenants and their interests for they are present. But when any cotenant's interest is not before the court, all orders concerning the property, the debts thereon, the rents, the division of rents, the possession, the division of possession, the crops, the division of crops, and all other matters incident to the estate collide head-on with the absent interests. In such circumstances those orders cannot be made effective. Consequently, procedural demands require *all* cotenants to be in court to confer effective jurisdiction.

The point decided—that one cotenant's interest can be subjected was never doubted. It was ever conceded. Consequently, the decision has no value. But the adjective law point actually in issue—whether all cotenants must be in court before jurisdiction is conferred, we submit, escaped the court. It has not yet been decided.

Mangus filed alone. That filing did not confer jurisdiction. Hence, no stay resulted. The forfeiture therefore occurred notwithstanding he had filed. And since it did, when Mrs. Mangus afterward filed and the two were finally before the court together, they had no property right over which jurisdiction could result. Their right had been forfeited. Federal Land Bank vs. Sorenson (Utah), 121 P. (2d) 398. Leone vs. Zuniga, 84 Utah 417, 34 P. (2d) 699. Wright vs. Union Central Life Ins. Co., 304 U. S. 502.

II.

THE COURT HAS MISTAKEN THE POINT AT ISSUE ON THE MOTION TO DISMISS.

The rent deposited by the debtors for the 3-year stay was required by §75(s)(2). They withdrew it when the court of appeals decided against them.

The opinion here says that withdrawal did not affect the court's jurisdiction below. That was never our contention. We contended regarding the effect in *this* court *not* the district court. The effect in this court was the point at issue. Upon that point the opinion is inconclusive. It is submitted the court has overlooked the rule of law that by accepting benefits which flow from a judgment directly or indirectly an appellant is estopped and waives his right to appeal. There can be no question about the rule.

Respondent respectfully urges that this Honorable Court has erred in its decision and that a rehearing should be granted.

Respectfully submitted,
H. P. THOMAS,
Counsel for Respondent.

DANIEL H. THOMAS and
THOMAS & THOMAS
Of Counsel.
Dated December 24, 1942.

SUPREME COURT OF THE UNITED STATES.

No. 74.—October Term, 1942.

Walter L. Mangus and Rose L. Mangus, Petitioners, *vs.* Matthew A. Miller.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[December 7, 1942.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question is whether the interest of one of two joint tenants of a land purchase contract can be administered in farmer-debtor proceedings under § 75 of the Bankruptcy Act as amended, 11 U. S. C. § 203, although subsequent to the filing of his petition the interest of his co-tenant had been forfeited by default in payment of installments of the purchase price.

Petitioners, husband and wife, as "joint tenants with full right of survivorship and not as tenants in common", entered into a contract with respondent's assignor for the purchase of a plot of land. They apparently entered into possession under the contract, although the fact does not explicitly appear in the record. The contract stipulated for a down payment of $500 of the purchase price and for payment of the balance in equal monthly installments extending over a period of more than seven years. Nearly two years later, the buyers being in default in payment of installments, respondent gave appropriate notice, in conformity to state law, that the contract would be forfeited unless all payments due were made. Five days before the date on which the forfeiture was to become effective, the husband alone, without reference to his co-tenant, filed his petition as a farmer-debtor under § 75. After the date of forfeiture, respondent moved, on a showing of the facts as stated, to strike the land in question from the schedules of the debtor's property, challenging the jurisdiction of the court to administer it. The wife thereupon filed in the bankruptcy proceeding a "joinder of Rose L. Mangus" in which she asked to be permitted to adopt the petition of her husband for relief under § 75 and his schedules of property, referring to the land in question. It does not appear whether she was an insolvent farmer-

debtor within the meaning of § 75(r), and so entitled to the benefits of the Act. Upon respondent's filing of a supplemental motion to strike the land from the schedules of the debtor's property, with a showing that at the time of the wife's attempted joinder she had forfeited her interest in the property, the court denied both of respondent's motions.

The Court of Appeals for the Tenth Circuit reversed, 125 F. 2d 567, holding that the right or interest which the wife had acquired in the land by the contract of purchase had been forfeited before her attempted joinder in the bankruptcy proceedings, see *Federal Land Bank of Berkeley* v. *Sorenson*, 121 P. 2d 398; *Leone* v. *Zuniga*, 84 Utah 417, and that in consequence she had no remaining interest in the land which she could ask the bankruptcy court to administer. It thought that by the forfeiture respondent became vested as her successor with the interest which she had acquired in the land by virtue of the contract. But it was also of opinion that notwithstanding the forfeiture she remained a joint tenant of the contract with her husband and so was an indispensable party to any judgment or order of the bankruptcy court making disposition of the debtor's interest in the contract and the property. It also pointed out that although the interest of a bankrupt joint tenant may be sold in a regular bankruptcy proceeding, the proceedings under § 75(a)-(r) do not look in the first instance to a sale of the debtor's property or operate to pass title to a trustee or the court, but contemplate maintenance of the *status quo* by a moratorium pending an adjustment or composition of his debts, and his ultimate emergence from bankruptcy with all his property. See *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, 184; *Wright* v. *Union Central Life Ins. Co.*, 311 U. S. 273.

From all this the court concluded that the difficulties of administration of the bankrupt's interest in § 75 proceedings are so insurmountable as to require dismissal of the proceeding.[1] In the circumstances of this case it attributed these difficulties to the uncertainty as to the rights of the husband as joint tenant of the contract with his wife and as tenant in common with respondent of the land. The uncertainty arose, it was suggested, from the doubt whether the husband upon effecting an adjustment and compromise with creditors would be entitled to acquire all the land upon payment of the balance of the purchase price, or only to demand half of it

[1] Compare Buss v. Prudential Ins. Co., 126 F. 2d 960; In re Harris, 15 F. Supp. 404.

on payment of one-half of the purchase money due. We granted certiorari, 316 U. S. 657, on a petition which challenged the rulings of the Circuit Court of Appeals that the wife was an indispensable party to the farmer-debtor proceeding, and that the interest of the husband alone was not susceptible of administration in that proceeding.

Section 75(n) directs that the filing of the farmer-debtor's petition "shall immediately subject the farmer and all his property . . . for all the purposes of this section, to the exclusive jurisdiction of the court . . . including . . . any equity or right in such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts". Section 75(o) provides an effective moratorium, pending further proceedings, against the forfeiture of the debtor's interest in the property over which the court has jurisdiction. This it accomplishes by staying, unless otherwise permitted by the court, proceedings for foreclosure of a mortgage, or for cancellation or rescission of an agreement for the sale of land, or for the recovery of possession of land, or for the seizure or sale of the debtor's property under conditional sales agreement. *Kalb* v. *Feuerstein*, 308 U. S. 433; *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 120.

We see no reason to doubt that, under these provisions and others presently to be noted, the bankruptcy court had jurisdiction in a § 75 proceeding over the husband's interest as joint tenant in the contract for the purchase of the land. Section 75(n) expressly subjects to the jurisdiction of the bankruptcy court the vendee's interest in such a contract. And, so far as we are advised, Utah accepts the general common law rules relating to joint tenancies, including the rules permitting alienation of the interest of a joint tenant, and making it property subject to execution and separate sale. Cf. *Spalding* v. *Allred*, 23 Utah 354; *Neill* v. *Royce*, 120 P. 2d 327; § 104-37-9 Revised Statutes of Utah, 1933; and see 3 Tiffany, Real Property (3rd ed.) § 425; 2 Thompson, Real Property §§ 1714-17. When so locally recognized the interest of a joint tenant is a property interest subject to the jurisdiction of the bankruptcy court under § 70 of the general Bankruptcy Act, 11 U. S. C. § 110. *Matter of DePree*, 30 A. B. R. (N. S.) 629; *In re Williams*, 16 A. B. R. (N. S.) 218; cf. *In re Brown*, 60 F. (2d) 269; *In re Williams' Estate*, 16 F. Supp. 909.

Section 75(n) of the Farm Bankruptcy Act, 11 U. S. C. § 203(n), which provides that the filing of a petition shall subject "the

farmer and all his property" to the jurisdiction of the Court, further directs that "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer . . . . shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered. . . ." And sub-section (s)(4) of § 75 commands that ". . . the provisions of this title shall be held to apply also to partnerships, common, entirety, joint, community ownership . . . and any such parties may join in one petition."

The final clause of this provision permitting both joint tenants to join in the petition suggests that either, if entitled to the benefits of the Act, may file a petition without the other. Such was declared to be its purpose by the House Judiciary Committee which recommended its addition by way of amendment to § 75(s) as originally enacted. In reporting this amendment the Committee pointed out the diversity of rulings of the courts under § 75, saying, "Some have held that if a husband and wife were jointly interested or had interests in common or were partners in the farming operation that then neither of them could take advantage of the Act, nor could they join. Obviously such was not the intention of Congress". H. R. Rep. No. 570, 74th Cong., 1st Sess., p. 4. We need not now determine whether the wife, who does not appear to be a farmer-debtor, could before the forfeiture have joined in the petition. It is enough that one joint tenant is authorized to file his petition under § 75 and subject his interest to the jurisdiction of the bankruptcy court just as he may under § 70 of the general Bankruptcy Act.

Accordingly we conclude that the husband's interest in the property held by him as joint tenant with his wife is property within the meaning of § 75(n), and that the court acquired jurisdiction over that interest upon the filing of his petition. The husband's interest as joint tenant being subject to the jurisdiction of the bankruptcy court, he was entitled to the benefit of the moratorium afforded by § 75(o) for the purpose of enabling him to effect a composition with his creditors, failing which he was entitled to proceed under § 75(s). *John Hancock Ins. Co.* v. *Bartels, supra.*

The Court of Appeals cited no decision of the Utah courts and we are referred to none which supports its conclusion that respondent, as the result of the forfeiture of the wife's interest in the land, succeeded to that interest and became a co-tenant with the husband. So far as the law of that state is concerned, it would seem to be an equally tenable position that the forfeiture freed respondent's title of any equitable interest of the wife and left it subject only to such demands as the husband might assert by virtue of his interest. In advance of an authoritative determination by the state courts of the rights of the parties to the contract after the forfeiture of the wife's interest, we cannot say that the difficulties of administering the husband's interest under § 75(s) are insurmountable. Indeed, before dismissing the proceedings because of difficulties in ascertaining the rights of the debtor under state law and in administering them in bankruptcy, it would be an appropriate exercise of the court's jurisdiction to take suitable measures to remove those difficulties by affording the interested parties opportunity to assert their rights in the state courts and, when they are ascertained and defined, by administering the debtor's interest as the Act provides, so far as may be found to be practicable.

Section 75(e) provides that "after the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors." During such control the court is free to permit and to facilitate proceedings in the state courts which would adjudicate the interests of the parties in the contract, subject to the stay directed by § 75(o) of any cancellation of the contract or foreclosure of petitioner's interest in it. Utah, by § 104-3-18 of its Revised Statutes, has provided that "all persons holding as tenants in common or as joint tenants or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights involved. In all cases one tenant in common or joint tenant can sue his co-tenant." And it has adopted the Uniform Declaratory Judgments Act under which respondent or petitioners, or either of them, are free to proceed to an adjudication of their rights. §§ 104-64-1 *et seq*, Revised Statutes of Utah, 1933. We perceive no insurmountable obstacle, if the bankruptcy court is so advised, to the exercise of its juris-

diction so as to permit the parties to ascertain their respective rights by an appropriate proceeding in the state courts. See *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, 483. While such practice is to be regarded as exceptional, the circumstances which here suggest it appear to be exceptional. It may be suggested too that if pending the proceedings for adjustment or composition with creditors the wife were to release or assign to her co-tenant her interest in the contract, all beneficial interest under which she has forfeited, the technical difficulties thought to exist by reason of her absence as a party from the bankruptcy proceedings might be removed.

With the court's jurisdiction over the debtor's interest in the land and the duty to administer it established, we cannot say that the accommodation with respondent and other creditors which the statute contemplates could not be arrived at. But in the event that no composition is effected the debtor may ask to be adjudicated a bankrupt and as such to be placed in possession of the property under the provisions of § 75(s) upon terms which will enable him, by paying a suitable rental, to redeem the property unless he is sooner able to finance himself. See *John Hancock Ins. Co.* v. *Bartels*, *supra*. If his interest is found to be such that it is impracticable to place him in possession or otherwise to administer the property as provided by § 75(s), he is entitled to petition the court for leave to redeem the property, and if he is unable to redeem it, a sale of his interest may be ordered as directed by § 75(s)(3). *Wright* v. *Union Central Ins. Co.*, *supra*. The sale of the interest of a co-tenant may be separately effected in a bankruptcy proceeding. *In re Toms*, 101 F. 2d 617; *In re Brown*, *supra*, 273. And we cannot say that a court possessing the powers of a court of equity could not in this case direct a sale on conditions which would protect the rights of the debtor, respondent, and the purchaser.

Respondent moves to dismiss the writ of certiorari because after the judgment below denying the district court's jurisdiction, petitioners procured a return of rental deposited by them in the bankruptcy court as an incident to proceedings under § 75(s)(2). It is argued that this action is so inconsistent with petitioners' appeal as to estop them from further prosecution of it. The order, if any, directing the deposit, and the attendant proceedings do not appear in the record. Whether the withdrawal of the amount deposited is so inconsistent with further proceedings for the three-year stay

authorized by § 75(s) upon payment of a prescribed rental obviously cannot be determined on this record and should, in any case, be determined in the first instance by the bankruptcy court having jurisdiction of the cause. But it plainly is not inconsistent with other remedies which the court has jurisdiction to give under § 75, or with recourse to measures which the court may take to permit an adjudication of the rights of the parties, on the basis of which a composition may be effected. In any case, since deposit of rental is not prerequisite to jurisdiction, petitioners' recall and receipt of money, whatever effect it may have had on their right to the three-year stay authorized by § 75(s), involved no inconsistency with the assertion on this appeal of the court's jurisdiction to resolve that question and to take other appropriate action. The court's authority to give relief upon compliance with such terms as it may properly impose, including the payment of rental, either by moratorium pending a composition with creditors or by sale as the statute provides, remains unaffected. At least it has authority under § 75(s) and is required to permit redemption of the property by the debtor before ordering a sale. *Wright* v. *Union Central Ins. Co., supra.*

We are of opinion that the bankruptcy court has jurisdiction over the debtor's interest in the property in question and that in its sound discretion it should, in every practicable way, exercise that jurisdiction for the protection of the interest of the debtor as the statute directs.

The judgment below should be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.